SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1947

No. 292

JOHN HENRY BRUNSON, PETITIONER,

vs.

STATE OF NORTH CAROLINA

Nos. 293-296

(RECORDS ARE NOT PRINTED IN THESE CASES—SEE STIPULATION)

ON WRITS OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF NORTH CAROLINA

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[fol. 1]

IN SUPREME COURT OF NORTH CAROLINA, ELEVENTH DISTRICT, SPRING TERM, 1947

No. 724

STATE

v.

JOHN HENRY BRUNSON

From Forsyth

Before Rousseau, J., November Term 1946, Forsyth Superior Court—Defendant appealed.

STATEMENT OF CASE ON APPEAL

The defendant was tried on October 30, 1946, under a warrant sworn out in the Municipal Court of the City of Winston-Salem, N. C., charging him with an assault on a female, and found guilty (no jury being provided for in the creation and set-up of said Municipal Court) and defendant appealed to the November Term of the Superior Court of Forsyth County.

Upon the call of this case in the Superior Court the defendant forthwith filed his "Motion To Quash, Etc.", which was heard upon the evidence offered by the defendant and the State, and said Motion was overruled, to which ruling and denial the defendant excepted, as well as to the Court's "Findings of Fact" thereon. His Honor next ordered the trial proceeded with before a jury, on its merits, upon the original warrant issued by the Municipal Court and, upon the evidence offered by the State, the jury returned a verdict of guilty. Judgment was rendered, to which the defendant duly excepted and gave notice of appeal to the Supreme Court, in open Court.

[fol. 2] IN THE MUNICIPAL COURT OF THE CITY OF WINSTON-SALEM

STATE

v.

JOHN HENRY BRUNSON

WARRANT FOR ASSAULT

Christine Davis, being duly sworn, deposes and says that John Henry Brunson on or about the 23rd day of October 1946, at and in the County aforesaid or within the corporate limits of the City of Winston-Salem, did unlawfully and wilfully assault, beat and wound one Christine Davis, a woman, he being a man over 18 years of age, to the great damage of the said Christine Davis, against the statute in such cases made and provided and against the peace and dignity of the State and in violation of Consolidated Statutes, Section —, Chapter —.

Christine Davis, Complainant.

Sworn to and subscribed before me this 23rd day of October 1946. M. L. Ferrell, Clerk, By R. H. Ellison, Deputy Clerk.

STATE OF NORTH CAROLINA:

To the Chief of Police, City of Winston-Salem, or Other Lawful Officer of Forsyth County—Greetings:

For the causes stated in the above affidavit, you are hereby commanded forthwith to arrest John Henry Brunson and him safely keep, so that you have him before the Municipal Court of the City of Winston-Salem, on the 24th day of October 1946, then and there to answer the above complaint, and to be dealt with as the law directs.

Given under my hand and seal this 23rd day of October 1946.

M. L. Ferrell, Clerk Municipal Court, Winston-Salem. By R. H. Ellison, Deputy Clerk. (Seal.)

[fol. 3] IN THE MUNICIPAL COURT OF THE CITY OF WINSTON-SALEM

JUDGMENT

Upon the trial of this case the defendant is: Plea—not guilty—adjudged guilty. Defendant sentenced to 12 months in jail to be assigned to and work under the supervision of the State Highway Commission. Defendant appeals to Nov. 11, 1946 Term Forsyth County Superior Court. Bond $3,000. Committed to jail.

This 30th day of October 1946.

M. L. Ferrell, Clerk.

Endorsed: State v. John Henry Brunson (Colored). Warrant for assault on a woman issued 29th day of October 1946. Summons as witnesses ——. Rec'd 23rd day of October 1946. Exec'd 23rd day of October, 1946. Ex. by Officer H. J. Critz.

Recognizance of defendant on appeal to Muncipal Court in the sum of $50.00 appears in the original transcript.

Recognizance of defendant on appeal to Superior Court in the sum of $3,000 appears in the original transcript.

IN SUPERIOR COURT OF FORSYTH COUNTY

ORGANIZATION OF COURT

Monday, November 11, 1946.

Be it remembered that a Forsyth County Superior Court is begun and being held for the County of Forsyth at the Courthouse in Winston-Salem, N. C., on the 11th day of November 1946, for the trial of criminal cases or civil cases, or both. Honorable J. A. Rousseau, Regular Judge, present and presiding. Honorable J. Earle McMichael, Solicitor for the Eleventh Judicial District, present and [fol. 4] prosecuting the Criminal Docket for this Court. Today being a Legal Holiday (Armistice Day) Court takes a recess until 10 A. M. Tuesday, November 12, 1946.

Tuesday, November 12, 1946.

Court meets pursuant to an order of recess on yesterday. Then comes E. G. Shore, Sheriff of Forsyth County, and in obedience to a venire to him directed by the Board of County Commissioners, returns into Court the following good and lawful persons summoned by him to serve as jurors this the first week of this term of the Court, viz: J. C. Lawrence, W. H. Wright, J. M. White, A. M. Owen, Thos. Tesh, S. L. Furches, Norman H. Kiger, Gurney W. Borender, C. B. McClain, Jack Bodenhamer, P. B. Chumley, E. F. Allgood, W. C. Moore, W. W. Hauser, G. F. Enochs, J. W. Petticord, Sr., J. E. Beamon, James C. Whicker, Jefferson H. Hairston, E. Burton Harpe, Joseph G. Smith, J. P. Crews, J. R. Yokeley, and G. Preston Hege.

For reasons satisfactory to the Court the following good and lawful persons are excused from serving as jurors, this the first week of this term of Court, viz: J. C. Lawrence, W. C. Moore, J. W. Petticord, Sr., J. E. Beamon, Joseph G. Smith, and J. P. Crews.

The following good and lawful persons are summoned to serve as talesmen jurors this the first week of this term of Court, to-wit, viz: N. E. Hartley, J. O. Neal, O. G. Jones, L. C. Creech, F. T. Disher, J. M. Parish, T. J. Reavis, and J. W. Yokeley.

Thursday, November 14, 1946.

The following good and lawful persons are summoned to serve as talesmen jurors, this the first week of this term of Court, viz: R. T. Southard.

[fol. 5] In Superior Court of Forsyth County

Motion to Quash, Etc.—Filed November 14, 1946

To the Honorable J. A. Rousseau, Judge presiding:

The defendant, John Henry Brunson, moves the Court to quash the warrant against him herein and to discharge the petit jury for the following reasons and on the following grounds:

1. That the Grand Jurors sworn, summoned to, and serving at this Criminal Term of the Superior Court of

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Forsyth County, are made up and composed of white people only.

That the Board of County Commissioners of Forsyth County in passing upon and in selecting the names of persons to make up and to constitute the jury list for Forsyth County for the biennial period from about July 1945 to about July 1947, designedly and with the purpose at the time of discriminating against the members of the Negro or colored race, left off of said jury list and purposely refused or purposely declined to place on said jury list, solely because they were Negroes, a tremendously large and overwhelming portion of the Negro tax listers of Forsyth County who were qualified to be selected and placed on said jury list as provided by the laws of North Carolina; that said arbitrary plan and systematic exclusion of eligible jurymen of the Negro race with the pitifully small number of Negro persons whom said Board of County Commissioners put on said jury list, in proportion to the large or total number of white persons whom said Board put on said jury list, which arbitrary plan and systematic exclusion said Board designedly and purposely set up, followed, and carried out, is and was contrary to the law and in plain and in open violation of the due process and equal protection clauses of the 14th Amendment to the Constitution of the United States and of Acts of the United States Congress [fol. 6] and was and is in violation of the rights of this defendant and is an intentional discrimination against members of the Negro race, and that the rights and liberties of this defendant are prejudiced and unlawfully affected thereby. That said plan followed and engaged in of racial exclusion by said Board in wilfully and designedly excluding and declining to place on said jury list a tremendously large and overwhelming number or portion of the Negro tax listers of Forsyth County and of unlawfully and intentionally limiting said members of the Negro race in said plan and set-up followed and engaged in by said Board in selecting said jury list, was, and is, contrary to law, inequitable, and unjust and same has been and is unlawfully affecting and prejudicing the rights and liberties of this defendant, who is a member of the Negro race.

2. That the same plan and set-up for making up and selecting each and all of the other jury lists for Forsyth County has continuously and persistently and consistently been followed, used, and adopted, and carried out for the

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past ten years and longer, and with the same results and effect as the plan and set-up set forth under paragraph 1 hereof, by the Board of County Commissioners of Forsyth County, who served during said period of ten years and longer, and that the same designedly and purposeful plan and agreement, as above set forth and outlined, of discriminating against the members of the Negro or colored race, and of their continual exclusion in making up and in selecting said jury lists for the past ten years and longer, has been carried out.

That on information and belief, no names of Negroes were selected and placed on said jury lists by said Board and no Negroes served on the Grand Jury or the Petit Jury during some of the time of said period of ten years past or longer.

3. That the list of names selected by said Board of [fol. 7] County Commissioners to compose and to constitute the jury list of Forsyth County for the biennial from about July 1945 to about July 1947 has been copied on small scrolls of paper and placed in a box procured for that purpose which jury box, with names now appearing therein as selected, is now being used as the regular jury box for Forsyth County, and from which box the Grand Jury and Petit Jury summoned to this Criminal Term of Court by the Sheriff of Forsyth County are now in attendance upon this Court to serve as said jurors.

That the Petit Jury now in attendance upon this Court was selected by said Board of County Commissioners from said jury box in the manner and to the extent and under said plan and arrangement set forth herein under paragraph 1 of this Motion, and said Petit Jury has been summoned by the Sheriff of this County from said jury list so selected and drawn by said Board of County Commissioners to be summoned and to serve at this Criminal Term of this Court.

That the Grand Jury now in attendance upon this Court was selected by said Board of County Commissioners in the manner and to the extent and under the plan and arrangement set forth herein under paragraph 1 of this Motion, and said Grand Jury has been summoned by the Sheriff of this County from said jury list so selected, and later drawn by said Board of County Commissioners to be summoned and to serve at this Criminal Term of this Court.

That said Petit Jury should be discharged and not allowed to serve as jurors for the reasons and on account of

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the matters and things herein set forth, and the warrant in this case should be quashed.

4. That the plan or system or set-up provided by law for selecting and drawing jurors and in making out, preparing and selecting jury lists in North Carolina as set [fol. 8] forth in Sections 1, 2, and 3, etc., of Chapter 9 of the General Statutes of North Carolina, is discriminatory and contrary to and in plain violation of the due process and equal protection clauses of the 14th Amendment to the Constitution of the United States, in that, among other things, it requires tax-listing and payment of taxes as qualifications for jury service in North Carolina.

5. That Section 11 of Chapter 9 of the General Statutes of North Carolina providing and requiring persons to be freeholders and/or owners of real property in North Carolina in order to be entitled or qualified to serve as talesmen on juries in North Carolina is discriminatory and contrary to and in plain violation of the due process and equal protection clauses of the 14th Amendment to the Constitution of the United States, in that it fixes as a qualification for jury duty, that persons shall have the status of freeholder or shall own real property.

6. That the practice, plan and method pursued by the Board of County Commissioners of Forsyth County in drawing up, selecting and constituting the jury lists for jury service over the past ten years, and longer, and with respect to the present jury panel are otherwise discriminatory and contrary to the Constitution and laws of the United States.

Wherefore, the defendant, John Henry Brunson, prays the Court that said warrant be quashed and that said petit jury panel be discharged.

W. R. Dalton, Counsel for Defendant.

This Nov. 13, 1946.

[fol. 9] *Duly sworn to by John Henry Brunson. Jurat omitted in printing.*

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IN SUPERIOR COURT OF FORSYTH COUNTY

STIPULATION AS TO CERTAIN FACTS

It is agreed by the Solicitor for the State and counsel for the defendant that in order to save unnecessary cost and expense of printing, besides unnecessarily encumbering this record, that it shall not be necessary to copy and put in this record the 51916 names of prospective jurors which appear typewritten and alphabetically arranged on the respective biennial jury lists of Forsyth County for 1935, 1937, 1939, 1941, 1943, and 1945, which were offered in evidence by the defendant in this case; that said names have been counted separately, according to Township, from said jury lists of names biennially prepared, which were listed, arranged, and put up in separate batches or bundles and with the name of the Township and the biennial period written out at the top or (head) on the face (or 1st sheet) of the separate batch or bundle so arranged and with metal clips attached to each separate batch or bundle, thus separating the Township that was so arranged from the other Townships.

That for the biennial period of 1935 there was no such separate list made out for Southfork Township, but there were such separate lists made out for all of the other Townships in the County; that for the biennial period of 1937 there was no such separate list made out for Middlefork Township, but there were such separate lists made out for all of the other Townships in the County; that for the bien-
[fol. 10] nial period of 1939 there was no such separate list made out for Abbott's Creek, Belews Creek, Bethania, Broadbay, Clemmonsville, Kernersville, Lewisville, Middlefork, Old Town, Old Richmond, Salem Chapel, Southfork, and Vienna, Townships, but there was such separate list made out for Winston-Salem; that for the biennial period of 1941 there was no such separate list made out for Abbott's Creek, Belews Creek, Old Town, Old Richmond, Salem Chapel, Southfork, and Vienna Townships, but there was such separate list made out for Bethania, Broadbay, Clemmonsville, Kernersville, Lewisville, Middlefork, and Winston-Salem Townships, and there was also such separate list of Negroes marked "Colored"; that for the biennial period of 1943 there was no such separate list made out for Abbott's Creek, Belews Creek, Bethania, Broadbay, Clem-

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monsville, Kernersville, Lewisville, Middlefork, Old Town, Old Richmond, Salem Chapel, Southfork and Vienna Townships, but there was such separate list made out for Winston-Salem Township; that for the biennial period of 1945 there were such separate lists made out for each and all of the 14 Townships in the County, and there was also such separate list of Negroes marked "Colored".

That the postoffice address or residence address of each person (whose name appears on said jury lists for said biennial years from 1935 to 1945-47, inclusive), was typewritten and entered immediately opposite or immediately underneath each respective name, and there appears on these biennial lists from 1935 to 1945-47 (inclusive) each biennial period, the names of persons (jurors) from every Township in Forsyth County.

That said jury lists, so arranged and indicated, from 1935 to 1945-47 (inclusive) are made up and show the following number of names, according to Townships, of Forsyth County:

	1935	1937	1939	1941	1943	1945
Abbott's Creek	289	191				284
Belews Creek	102	91				103
Bethania	312	186		488		311
Broadbay	540	230		765		539
Clemmonsville	130	71		213		128
Kernersville	341	105		700		340
Lewisville	181	140		445		180
Middlefork	749			2170		767
Old Town	471	243				464
Old Richmond	170	115				156
Salem Chapel	408	69				132
Southfork		297				275
Vienna	73	107				73
W-Salem	7188	3896	7754	3855	7973	6615
Colored				236		255
	10954	5741	7754	8872	7973	10622

[fol. 11] It is Further Stipulated and Agreed that although the above tabulation does not show it, yet in fact there were in the jury lists introduced in evidence, names of persons (jurors) for every Township in Forsyth County for said biennial years.

For the biennial periods of 1939 and 1943, although only Winston-Salem Township is listed, from an examination of the lists introduced in evidence for these two biennial

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periods, the other 13 Townships are represented thereon by names in a ratio as appears in the tabulation for the biennial periods of 1935, 1937, 1941, and 1945.

[fol. 12] In Superior Court of Forsyth County

Defendants' Evidence on Motion to Quash, etc.

Margaret Bell testified: I have lived in Winston-Salem all of my life. I work for the Winston-Salem Chamber of Commerce. The last United States census for Forsyth County was for 1940, and showed a population of 126,475 persons of which approximately 45% are colored and 55% are white. There has been no census taken since that time for Forsyth County but an unofficial estimate of the population made by the Winston-Salem Chamber of Commerce for 1946 is 150,000 persons, of which 45% is colored. It is one of the functions of the Winston-Salem Chamber of Commerce to investigate matters of census and population. I have been engaged in this particular work. I have been employed by the Winston-Salem Chamber of Commerce since February of 1946.

The figures which I have testified to have been taken from the records of the Winston-Salem Chamber of Commerce and is information given out to the public generally as reliable and official records of the Chamber's office.

Virgil W. Joyce testified: I have lived in Winston-Salem about 25 years and am County Tax Supervisor for Forsyth County and have been since 1938. My duties consist of listing, assessing and billing in connection with tax assessment in Forsyth County. All persons, white and colored, who own property in the County or who reside in Forsyth County are expected to list through my office the taxes which they are required to pay under the law. January of each year is the usual or regular tax listing period. My office receives the returns of all property owners during the month of January each year, and at any time during the year if they have not listed their taxes. The records of my office show all of the townships of Forsyth County for tax listing purposes. There are approximately 50,000 tax tickets

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[fol. 13] for the current year 1946, for Forsyth County of which there are approximately 43,000 taxpayers and 32,500 of these are white and 4,000 colored. Each year we have to garnishee their payrolls and we have a pick-up list of approximately 3,000 colored from the garnishment of payrolls and approximately 1,000 white pick-up payroll list; and approximately 2,500 firms and corporations, churches, organizations, and so forth. That makes a total of 43,000 and that balance there of 7,000 is just a rough estimate of additional properties owned by the taxpayers, shown as separate tax tickets.

These 7,000 are included in the 50,000 estimation, and consists of people who own two or more different pieces of property at different locations in the city or in the county, and under our tax listing set-up, we require them to list separately for those different pieces of property. We make out a ticket for each piece of property and if a person owns six or seven different pieces of property, he would be listed on our tax books six or seven different times. The tax listings include real estate, personal property and all other properties and they also include a listing of poll taxes.

Cross-examination:

My approximation is 32,500 whites and about 4,000 colored. The 3,000 colored garnishees is nothing but just poll taxes and is picked up from payroll lists. These pick-ups occur where garnishees do not list their taxes. We actually have on our tax list about 32,500 tax listers.

Redirect examination:

We also have 1,000 white delinquents that are picked up. These are people who through error or oversight or maybe intentionally, kept their names off our tax records and we in checking up, found them and put them on. The same thing applied to the colored. And the delinquents, colored, embrace real property and personal property. The 3,000 delinquents, colored, were made up of persons who are re-
[fol. 14] quired to pay poll tax and the 1,000 delinquents, white, were made up of those required to pay poll tax only.

Walter A. Mickle testified: I have lived in Forsyth County all my life. I am the County-City Tax Collector.

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I collect all taxes for Forsyth County including Winston-Salem. I have been in this office since July 1, 1946. 97% of the total taxes levied were collected for the year 1945. The earned discounts and releases that affect the levy reduced it to about 1-28/100 of a per cent not collected for 1945. This, mathematically, would figure from 98-½ to 98-¾ per cent collected.

This includes those levied on delinquents and everybody else, including the 3,000 which represents the estimate which the witness, Mr. Joyce, testified to of delinquents among the colored and also the 1,000 delinquents among the white and would also include all the other properties for the different people, including firms and corporations and everybody else.

Cross-examination:

Before I went in as Tax Collector, I was Deputy or Chief Deputy under Sheriff Shore from December 1936, and as Chief Deputy it was part of my duties to handle the jury list and apportion the jurors to the various deputies and see that the jurors drawn were summoned.

I also assisted in the actual drawing of the jury and the preparation of the list until July 1946. I also assisted every odd two years in helping the Clerk of the Board of Commissioners in preparing the jury scrolls that made up the jury list, by checking for dead, and people moved out of the county and other things. I would think that there are a proportionate amount of colored names in the box to the white, according to the tax scrolls of the County. I do not know of any colored man whose name has been drawn since the [fol. 15] nine years I have been there, that was not summoned if he could be found. We have had quite a number in the last five years on the Grand Juries. I know of Artie Cash, Charlie Jeffries and a colored janitor at Frank Stith's and others. It is a fact that there are jurors, Negroes, on Petit Juries, both criminal and civil, that served. At the drawing of these juries, there has never been any juries drawn since I was connected with it, where there was not a child of less than 10 years of age there at the drawing of the jury lists.

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Redirect examination:

I was never Clerk to the Board of County Commissioners. I never did serve the Board of County Commissioners. I have been present, representing the Sheriff's office, in the matter of drawing the jury by the Board of County Commissioners from December 1936, until June 1946. I did not take part in the deliberations of the Board of County Commissioners but was merely representing the Sheriff when he could not be there.

I don't know the names of the five colored men that were summoned for service on the Grand Jury in the last five years but I remember that we had this year one colored man, Charlie Peebles, who I believe served the first six months of this year. During the past five years, beside Peebles, this Cash boy that the Solicitor mentioned and there are others whose names I don't recall right now.

On the petit jury I don't recall anybody but I do know that Negroes have served but I don't recall their names. I don't know what names went into the jury box. I don't know the total number that went in there either. I had nothing to do with preparing the names that went into the jury box.

In connection with Mr. McMichael's question about my helping the Register of Deeds check these lists, I interpreted [fol. 16] his question to mean that the jury list contained a proportionate number of both races. I had nothing to do with putting the names into the jury box. I don't know what became of the names. They were in the custody of the Register of Deeds and I have no further knowledge after that. The list that the Register of Deeds had were taxpayers prepared by townships, typewritten sheets of the names of the taxpayers of the various townships of the county. I never prepared any lists or I never prepared those lists. I presume that these were tax lists but I don't know because I didn't prepare them. The list that I saw was the list furnished or handed to me by the Register of Deeds. The list I saw had a proportionate number of both races of taxpayers, I should think. I presume they were taxpayers. I don't know what proportion of the taxpayers was of colored and white.

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Recross-examination:

I never heard any Commissioner discuss whether a man was black or white, that I remember, during the time I was in the office as Chief Deputy, at the drawing of the jury.

Redirect examination:

I was not present at all the meetings of the Board of County Commissioners. I was only there when the jury was drawn. I don't know what discussion was had before I entered the room or after I left the room.

At this point, counsel for the defendant pointed out to the Court that they wished to produce Mr. Lentz, Clerk to the Board of County Commissioners and Register of Deeds, but that it was impossible for him to come up the stairs to the Courtroom because of a serious heart condition that he has.

The Solicitor stated that Mr. Lentz is the man who prepared the scrolls under the direction of the County Com- [fol. 17] missioners. The Solicitor indicated that he would not object to the introduction of the jury list records of the Board of County Commissioners.

Gene Pratt testified: I live in Forsyth County and have been a resident of this county most of my life. I was a candidate for the State Legislature, in the last primary campaign. I went downstairs with Messrs. W. R. Dalton and I. Duke Avnet, defendant's counsel, to talk to Mr. J. H. Lentz, the Register of Deeds and the Clerk to the Board of County Commissioners with regard to the jury lists here in Forsyth County, the day before yesterday. Mr. Lentz brought out and produced to me and to Messrs. Dalton and Avnet, attorneys, what he said were the jury lists typewritten for 1935, 1937, 1939, 1941, 1943 and 1945. These typewritten records were put on the table in his office in front of me for my examination by Mr. Lentz. The names on the list were arranged alphabetically.

For 1941 there was produced by Mr. Lentz for our inspection and in our presence a separate list of jurors of the jury list which was marked "colored" at the top. He stated that that was the state of the records of his office. For the year 1945 I examined the records produced there by Mr. Lentz and the jury list had a separate list marked "col-

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ored." I counted the total number of names on those typewritten sheets for white and colored for 1941. There was a total of 8,598 white names and 236 colored names, giving a grand total of 8,834 of both white and colored.

I counted every name on the 1945 jury list of both white and colored and the total of those names for whites was 10,367 and the total for colored 255, making a grand total of 10,622 for both white and colored.

I examined the typewritten pages of jury lists for each of the other years, namely, 1935, 1937, 1939 and 1943, [fol. 18] and found that the total for each of these respective years would not vary more than 150 or 200 from the grand total of 10,622 for the year 1945.

I have been in and out of the Forsyth County Superior Court about as much as the average person who did not have a case or was not an attorney and I have never yet seen a colored person sitting in the jury box. I do not know whether they were stood aside by lawyers or not. I do not know whether they were summoned here and begged to be excused or not for some good reason.

I am Business Agent for United Tobacco Workers, Local 22 and have been in that position since May 1945. Before that I was employed at Brown and Williamson Tobacco Company for 12½ years.

Cross-examination:

I know of Phil Jeffries, a colored man, in Winston-Salem. I don't say he didn't serve on the jury this year (1945). I don't say that Charlie Peebles did not serve on the Grand Jury for six months. I do not know how many times I have been to court in the last four years. I think I have been in court considerably more than six times in the last four years. I don't know the exact number of times.

On the jury lists that I saw in the Register of Deeds' office, I did see on that list "colored" at the head of it. I am not certain whether the jury lists which I saw were the original lists or a copy thereof. There was nothing opposite each individual name on the jury list to show whether it was white or colored. The word "colored" appeared only at the head of the paper. Mr. Lentz said that he had assistance in making up the original tax lists or scrolls for jury service and that he got people out of townships and tax listers in the various precincts to check for the purpose of

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checking off those who were dead or who had moved out of the county and those who were mentally incompetent. [fol. 19] Mr. Lentz told me also that when he made up the scrolls he cut them and made them up on typewritten lists, cut them with scissors and put them in the basket and presented them to the Board of Commissioners on the first Monday in July on the odd years and at that time they were put in the box. Mr. Lentz has been Register of Deeds as long as I can remember. Mr. Lentz did not say anything about a child under 10 years of age being used to draw the names for the jury list. I did not ask whether a child was used. I can't say whether the names on the colored lists for 1941 and 1945 were alphabetically arranged. There was a clip around them in the files separating them from the other names. They were very definitely separated from the other lists.

At this point, counsel for defendant requested that the jury list records be brought up promptly to the Court for the Court's inspection. The Court granted this request and ordered the lists to be brought up to the Courtroom, from the year 1935 on up to the present.

Ernie G. Shore testified: I am Sheriff of Forsyth County; have been since 1936. At this present term of the Superior Court of Forsyth County, there were no colored people summoned, there were none drawn or summoned for service on either the petit or Grand Jury.

During the period that I have served as Sheriff for Forsyth County, all of the colored persons that have been drawn from the jury lists, drawn out of the jury box, for service on the Grand Juries and on the petit juries, under the set-up of the County Board of Commissioners, have been summoned by me or through my office that have been found. There haven't been very many colored persons [fol. 20] summoned. I would say perhaps a dozen in all colored persons have been summoned from December 7, 1936, when I took office as Sheriff for Forsyth County up until the present time.

Cross-examination:

The figure of a dozen colored persons is my best estimate. We have had over five colored persons on the Grand Juries

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alone, not counting the petit juries. We had several on a six months Grand Jury. Mr. Jeffries didn't serve on the Grand Jury. He was in that panel. Charlie Peebles served on the Grand Jury and as far as I know every man that has ever been drawn that could be found by my department has been summoned.

My deputies and I helped Mr. Lentz in culling these lists and preparing them. We assist in removing from the list lawyers, policemen, officers, National Guardsmen and Firemen, Postal Employees and Railroad Employees. I have no idea as to the number of women making up the 40,000 tax listers in the County. I know that a good percentage of the tax listers are women. I should think that a good percent of the cards are minors, with the Wachovia Bank as guardian for them.

Redirect examination:

I don't know the percentage as to the women taxpayers or tax listers. I knew there were lots of them. I did not say the percentage was very small. I said I did not have any idea as to the percentage. I did not say the guardians were small in number.

Recross-examination:

I was present on a good many occasions when the jury lists were drawn by the Commissioners. On every occasion that I was present, they had a child under 10 there to draw the list. The Board of Commissioners requested me to have a child there under 10 years old at each drawing. My Chief Deputy, Mr. Mickle, and I saw to that on each occasion. I never heard any statement made by any Com-
[fol. 21] missioner, or inquiry made, as to whether a man drawn was white or black.

Redirect examination:

I was not present at all of the deliberations of the Board. I was only present when the jury list was drawn unless I had something to take up before the Board. That is the only time that I was present. I saw them put in the names that went into the jury list for the purpose of serving as jurors, on practically every occasion since I have been Sheriff. I

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saw them put the names in the box. I have been present practically every time. I mean for each two year period.

Upon motion by counsel for the defendants, the records of the Board of County Commissioners containing copies of the jury lists for the years 1935, 1937, 1939, 1941, 1943, and 1945 respectively, were admitted into evidence.

Gene Pratt (recalled) testified: (Upon being shown a paper writing by counsel for the defendant marked "colored" at the top, said paper writing having been taken from the 1941 jury list of the Board of County Commissioners which was in evidence):

I see what appears to be carbon marks, marks of carbon paper on this sheet. By the type I can't tell whether or not it is a carbon record. The paper is part of the 1941 group of records that Mr. Lentz, the Clerk to the Board turned over to me the day before yesterday to examine and to count the names thereon. Mr. Lentz told me that the jury lists that made up his records which he showed me, represented and were a copy of all the names that went into the jury box to be drawn as jurors in this county.

(Upon being shown a paper by counsel for the defendant marked "colored" at the top, which paper contained a list of names, typewritten):

[fol. 22] That paper is the list of the record turned over to me by the Register of Deeds for examination and for counting the names thereon, in the office of the Register of Deeds the day before yesterday. I counted the names on that list and they totaled 255, I think.

(Upon having his attention directed by counsel for the defendant to the clip which clip was holding together the papers containing the names at the head of which appeared the word "colored"): That clip was attached to those papers and it separated the "colored" list from the other names in the list that the Clerk to the Board of Commissioners turned over to me.

Virgil W. Joyce (recalled) testified: My estimate based upon some information and the records of my office of the

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percentage of the total number of tax listers of Forsyth County who are women is approximately 10%.

Cross-examination:

About 3 to 5% are non-residents who are listed in the County and for whom I have cards in my records. About 5 to 10% represent the guardians that are listed in my records for minors.

Redirect examination:

About 5 to 10% of the total number of tax listers, roughly speaking, represents guardians and guardian accounts. My estimate is based on my contact with the tax tickets and the tax books over a period of years.

At this point it was Stipulated between the Solicitor for the State and the counsel for the defendant, that the records of the Board of County Commissioners previously admitted into evidence are the copies of the original jury lists handed to the Commissioners, the names on which original lists [fol. 23] were put in the jury box as constituting the jury lists for these respective biennial periods, namely, from 1935 up through 1945-47.

William E. Church testified: I am Clerk of the Superior Court for Forsyth County, and have been since December 1, 1930. The day before yesterday afternoon, Mr. Dalton, one of the counsel for the defendant, requested me to go into the records of my office, the minutes of this Court's proceedings, and with the aid of my assistants and clerks, to determine and add up the number of jurors who have been summoned here out of the jury lists of this county for service on the Grand Juries and the petit juries in Forsyth County. The period to be covered was from October 1, 1936, up through this term of Court this year. I have not been able to complete that record but I have done some work on it. We started from October 1, 1936, and have prepared the record up through July 11, 1938.

We have the number of the jurors on the memorandum list in my hands that were excused on the opening day of the different terms of court that I have covered in my record. If some juror was excused after the opening day my record wouldn't include it. This year there are 11 regular Crimi-

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nal Terms of the Superior Court of Forsyth County and there are 9 regularly called Civil Terms. There are 20 terms for the present year (1946) which would carry us to January of 1947. From now until January 1, 1947, there will be three terms of Court, leaving 17 terms of Court that have already been held this year including this present term.

The Grand Jury under our set-up now serves for a period of 6 months, namely, from January 1st to July 1st. The Grand Jury is composed of 18 men. The practice of having a Grand Jury to serve 6 months has been in existence since July 1, 1937, by virtue of a law that was passed in 1937, [fol. 24] namely, Chapter 206, Public Local Laws of 1937. Since July 1937, 42 jurors have been drawn for the first week of the Criminal Court in January and July of each year, respectively, from which panel of 42 jurors is selected a panel of 18 members to serve as a Grand Jury for the 6 months period. The other weeks, 30 jurors are drawn, that is, the second week of all other terms. There are 30 jurors drawn for each week of each criminal term.

The lists and records of my office show so many names summoned by the Sheriff and turned into my office. Dating from July 1936, and up until the present time, the number of jurors excused after going into court would vary. During the war it would be different from the ordinary times. During some terms 4 were excused, sometimes 5 and different numbers. However, I would not think it would run so very high, that is, the number of excused at the opening of court.

For the last couple of years, there has been a small number of excuses and a small percentage summoned. It would depend on which Judge is presiding and the nature of the excuses has a lot to do with it. At the first week of each January and July Term of Criminal Court commencing with July 1, 1937, there were 42 jurors drawn. I can't tell how many were summoned out of the 42 drawn. We get our Grand Jury and the rest served on the regular (petit) jury. They were drawn but my records do not show who served on the Grand Jury. I can't state whether of those who were drawn from the box and summoned that an overwhelming number of those appeared in court for service here on the jury.

During the war we had a lot of trouble with jurors because there were thousands of people out of Forsyth County

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on defense jobs, in Norfolk, in Tennessee, and in the Army and Navy and Washington and other places. What the percentage would be I couldn't guess. Since the war the num- [fol. 25] ber summoned from the number drawn has increased. The percentage has not been 100 but we have been getting people back to the county practically ever since the war was over and they are still coming back. I do not know how many were summoned on the jury for these terms.

For the period from October 12, 1936, through July 11, 1938, my records show that there were 1,012 jurors summoned, of which number 113 were excused from jury service. There were 18 drawn for every Grand Jury that was drawn. I think that the figures I have just given for the period October 12, 1936, to July 11, 1938, would be fairly representative of the numbers summoned and excused for the period between July 11, 1938, to about January 1, 1942.

From the time of the War, about January 1, 1942, and through the War period, these figures mentioned would not be representative; in some terms of court during the War period, we didn't have over half of the number of jurors who were drawn and summoned. I would say that these conditions during the war period prevailed up until about the Fall of 1945 and the Spring of 1946. Since the Spring of 1946, and up until now, I would say that the figures which I previously gave for the period 1936 to 1938 would be fairly representative.

Cross-examination:

During the year 1946, and up until the Spring thereof, the 1936-1938 figures would not be a near approximation because not only on the weeks in which we held court do we get hardly 50% of the jurors drawn and summoned, but over half the time in the said period of 1946, only one week's term of court was held whereas two weeks had been scheduled and often there were but three or four days of civil court held out of a three week term. From 1942, and up until the Spring of 1946, there wouldn't average two courts a year that would hold a second week of the Criminal Term for that period. So the 1936-1938 figures which I gave [fol. 26] would not be any kind of approximation for the last 5 years that jurors were summoned and drawn. I could not begin to estimate the figures for this war period.

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I did not assist the Register of Deeds in the preparation of the jury lists but I did assist in checking them—that is, I would check them before they were run and cut and after they were typed and before they were put in the box. The records as to mental incompetence are kept in my office, that is, those that are officially adjudicated mental incompetents. In addition to that, I have knowledge of hundreds of other people in the county who would not make good jurymen but who have not been officially adjudicated incompetent.

My opinion as to the number of guardian accounts which I have in my office is between six and seven hundred which are being handled by other persons other than myself. I would say that I handle around four hundred to four hundred and fifty guardian accounts.

John D. Slawter testified: I live in Winston-Salem; have been a resident here for 35 years or more. I have been practicing law 31 years. During the course of my law practice in the last 20 or 30 years, I have had occasion to engage in the trial of civil and criminal cases here in the Superior Court of Forsyth County. My practice is such that I am frequently here engaged in the trial of court or in attendance upon court, and this has been true over the entire period of my practice. In being in and out and around the courthouse I have noticed the juries on different occasions here. I would not know as to how many colored people were summoned here in this court for service on the Grand Juries or on the petit juries. I know that there have been colored jurors who have served on the Grand Jury and on the petit juries. I would not estimate the number because I don't know. It [fol. 27] would be purely a guess on my part. I think there were more than 4 or 5 colored persons who had served on the Grand Jury and Petit Jury in the past 10 years. I would not say whether there were as many as 10 because that would be purely a guess on my part. I don't recall that I remember the name of any colored persons who served on the Grand or Petit juries in the past 10 years except Charlie Peebles who served on the Grand Jury here for six months. I don't remember the names of any of the other colored jurors.

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At this point, the Solicitor for the State admitted that no Negroes served on the Grand Jury in the year 1946, up to and including this term of Court.

I don't recall any other colored person serving on the Grand Jury or Petit Juries during 1945, excepting Charlie Peebles. I don't recall any colored person who served for the year 1946 on either the Grand Jury or Petit Juries. I don't recall how many colored persons served on the Grand Jury and Petit Jury in the year 1945. I don't know and have no opinion as to how many served in 1944 or in 1943.

Cross-examination:

Upon my recollection being refreshed I do remember Phil Jeffries serving on one of the juries this Spring. He may have served a whole week. I have appeared as counsel for a great many colored people. I would not pretend to say there have not been more than 5 Negroes who have served on the juries in the last 10 years.

Ernie G. Shore (recalled by the State) testified: The criminal jury for the next term of this court has a name of [fol. 28] a Negro drawn. I don't know whether he has been summoned. I noticed one on the list but I don't know whether he has been found or not.

Cross-examination:

The drawing of the names for the next term of this Court occurred on the first Monday in this month (October 1946).

Walter A. Mickle (recalled) testified: I think Mr. Virgil W. Joyce testified that on the tax list for the biennial period 1945-47 there were 3,000 colored delinquents and 1,000 white delinquents and it was explained that it is a pick-up list of taxpayers obtained from the payrolls of various corporations of the county. We start to pick up these names early in the year. We ask the corporations for a list of their employees and later in the year, some time in June or about the first part of July, we ask them to revise their lists of employees in order to get rid of those that may have been there earlier, and were not there at that time. We pick out

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those names every year and this applies to both white and colored.

The names thus picked up are of those people who are garnisheed for their taxes and this year it was completed about the first of September. We garnisheed all those names furnished us as of approximately July 1st. We proceed to collect from these persons as soon as the corporations are in a position to turn over the money to us. The collections this year were completed by September 1st. This date is fairly later than the date when collections are usually completed. I am not familiar with the former years having not been tax collector for previous years. I have been tax collector since July 1, 1946. I would say we collected taxes from about 50% of the colored and white delinquents. These are all made up of pick-ups. There is a distinction between the delinquents and pick-ups, the people [fol. 29] who list but do not pay the taxes listed are called delinquents. Those who fail to list taxes are considered pick-ups. With respect to the pick-ups, we exhaust every effort to collect taxes from them. It is only a poll tax that is charged to them and after we have gotten all of them we think we can possibly get, the tax supervisor then releases the balance of them and they are no longer heard of. It is the practice each year to collect the taxes from persons who fail to list their taxes in the year when the delinquency is discovered.

Cross-examination:

It is an annual proposition that most of these delinquents have to be picked up every year. It will run approximately about 3,000 colored and 1,000 whites each year.

Gene Pratt (recalled) testified: I have here a list which I think is complete and which shows alphabetically arranged the names of all of the townships in Forsyth County. They are: Abbotts Creek, Belews Creek, Bethania, Broadbay, Clemmonsville, Kernersville, Lewisville, Middle Fork, Old Town, Old Richmond, Salem Chapel, South Fork, Vienna, Winston-Salem. This includes all of the townships in Forsyth County. Fourteen in all. This is all. I checked some of the biennial jury lists which are in evidence to ascertain if those lists contained the names of jurors from any

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and all of the townships, in Forsyth County. As to the 1945 biennial jury list, there appeared the names of jurors from each township in the county. As to the 1943 biennial jury list, the names of the jurors appearing on the list are from only one township, namely, Winston. As to the 1941 biennal jury list, no names appeared thereon from the following townships: Abbotts Creek, Belews Creek, Old Town, Old Richmond, Salem Chapel, South Fork, Vienna Township. As to the 1939 biennial jury list, the names of the [fol. 30] jurors appearing on the list are from only one township, namely, Winston. As to the 1937 biennial jury list, there appeared the names of jurors from each township in the county with the exception of Middle Fork. As to the 1935 biennial jury list, all townships are represented on the jury list.

Cross-examination.

I looked through the township lists and followed alphabetically through it, that is, through the end of the list where the name of the township appears, and so I assumed that the townships that were not there, weren't there. The township appears on the jury list by name and if I remember correctly it was 236 names of colored persons that appeared on the biennial jury list for 1941. That was all that I saw on a separate list that I counted for 1941. I was referring only to the list marked "colored" in giving this figure for 1941.

I can't tell whether about half or two-fifths of the list for 1941 represents Winston Township. A considerable portion of it represents Winston Township. I do not say that the names on the other papers exclusive of those papers in the 1941 list marked "colored" are not colored persons. There is nothing on any list at all except that list headed "colored" persons that will designate a white man from a colored man.

Re-direct examination:

I was present when counsel for the defendant, Mr. Avnet and Mr. Dalton, approached Mr. Lentz, Clerk to the Board of County Commissioners, and asked him to produce the entire record list of juries that had been drawn by the Board of Commissioners for Forsyth County, for which records he was the custodian as Clerk to the Board. These papers

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in evidence contain all of the records that Mr. Lentz turned over to us there. The Clerk stated to us that this list marked "colored" for the 1945 biennial jury list, was a list of all the colored jurors whose names appeared in the box, according to his list and he stated the same thing as to the biennial jury list for 1941.

[fol. 31] CHRISTOPHER C. KELLUM testified: I live in Winston-Salem, and have resided here all of my life. I am in the insurance business. During the last 10 years and longer, while a resident of Winston-Salem, I have had occasion to be thrown with the colored people in a business and social way and other ways. I do come around the courts and see the juries in the box, like those gentlemen sitting there now. On the petit jury I have not seen any colored persons. I remember Artie Cash, Peebles and Phil Jeffries serving on the Grand Jury. I do not recall any I have ever seen or heard of serving on the petit juries.

Cross-examination:

Those names which I have mentioned are all that I know about. I don't know about Jeffries serving on the Petit Jury in this court in February 1946.

STATE'S EVIDENCE ON MOTION TO QUASH, *etc.*

JAMES G. HANES testified: I am Chairman of the County Board of Commissioners of Forsyth County and have been since 1928. In July of 1945, under the Statute, the Commissioners had the Clerk of the Board prepare and lay a scroll before them of the citizens and taxpayers of Forsyth County for the purpose of making up the jury list. To the best of our ability we checked the list and with the Clerk's help and the other people like Mr. Mickle and others, to find out who were dead and who had moved out of the county and who were people of good moral character.

After preparing that scroll we had that placed in the box according to the law and before doing that I had the old names removed from the box. No questions were asked concerning whites and blacks. The lists were prepared and made up from the tax list record. That list was originally prepared from the actual tax cards in Mr. Virgil [fol. 32] Joyce's office. They were turned over to Mr. Lentz

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and he was instructed to make the list from them. We have down here an IBM system where each taxpayer has a card and the original scroll that was turned over to Mr. Lentz was the running of every card that Mr. Joyce has in his office, and that was turned over. In the drawing of these lists, at no time did I or any other member of the Board ever discuss the qualifications of a juror as to whether he was white or colored. I do not know when I come to them whether they are white or colored unless I personally know the person. There is no red or black ink on any of them. They are all on black, I think.

I do not have any independent knowledge as to the proportion of the white and colored in the box. All I know is that they are in there according to the proportion as they were on the tax list. We have a child under 10 who picks one out of the box and hands it to the Clerk. There is usually one of the Deputy Sheriffs or the Sheriff there, some man that he asks to act for him—who hands it to the first Commissioner. There are three of us at the table. After the first Commissioner inspects it he hands it to the second Commissioner, and after the second Commissioner inspects it, he hands it to the third Commissioner, and after he inspects it he hands it to the stenographer, who writes the names.

If any Commissioner knows that name is dead or has left the county or has been convicted of a felony, then I destroy that scroll. Otherwise the name goes on the list and every jury that I have ever attended was drawn in open session, the doors open, and people walk in and out constantly. There are a number of lawyers in town who have from time to time been present when we were drawing jurors. So if there had been any discussion as to who was to go in the box, as to the color, it would have been a matter of public record. There is usually, too, a newspaper reporter present when we are drawing it.

[fol. 33] Cross-examination:

Every two years the Board of Commissioners makes up a separate new and distinct jury list, for service on the Grand Juries and Petit Juries here in Forsyth County. At the first meeting we ask the tax man, tax lister, tax collector to bring in all the tax cards in Forsyth County. He brings them in, presents them to the County Commissioners. We

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look through those. We couldn't, of course, inspect every name of 50,000 names. We look through them, ask questions, whether they were all there and all in proper order, and we turn them over to the Register of Deeds and ask him to make a complete copy. We do not make out a list from those. We turn them over to the Register of Deeds. We turn the cards over to the Register of Deeds, the complete cards that are handed to us by the tax collector. We turn all of these cards over to the Register of Deeds prepared from the tax books and which are handed to us from the tax collector's office.

We do not examine each one of these cards individually. We do the best we can. We leaf through them, and ask questions. We may take a bunch from one township, and another from another township. We have no special way to take that bunch. They are not divided as to corporation or individuals or anything. They are brought to us in a bunch. They are not brought to us in a bunch from a certain township but they are all brought in together for the county of Forsyth. The tax collector would bring to us all of the individual cards for tax listing purposes of a particular township.

I do not run through them. We examine them superficially. We could not examine 50,000 cards. We might pick up some cards and leaf through them and then we might not. We might not look at some of the cards at all. Some of them we don't look at. We take the word of the tax man, and the tax collector, that all the cards are there. That's [fol. 34] our instructions to him, to present all of them to us. We might pick up some cards and leaf through them without asking questions. We might look at some cards and might not. Some of the Commissioners, I presume—I don't remember—some of them, I don't guess, look at any of them. It would be impossible for us to look through 50,000 cards and we take the word of the tax man that he brought all the cards to us. We turn all the cards over, without any questions at all, to the Register of Deeds, with instructions to put all those names on his list that he puts into the jury box.

I have been referring to the tax lister's office. I relied exclusively then on all the cards that we turned in or presented to our Board by the tax lister's office. We did not check through his office or their records, if any, as to

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whether all those cards were there covering the taxpayers of Forsyth County. We take his word for that. The tax man would know better than I, what the total, approximate total number of tax listers in Forsyth County is now. I have a pretty good general knowledge of that myself.

So when we were making up this list back in 1945, the present one under which we are now operating, it was our opinion then that there were around 43,000 taxpayers, tax listers, in this county. We had approximately 43,000 cards for the present jury list set-up for the biennial period of July 1945, to July 1947, to turn into the Register of Deeds for preparing a list to go into the jury box. I turned in all that were turned in to us. He said 43,000 taxpayers on the witness stand in this trial. I don't know what percent of the total population of Forsyth County are colored people. That's not my business to keep up with that. I don't know what percent is white. I see the proportions printed from time to time. I heard Margaret Bell testify to it this morning, in this hearing. We keep no record as to those rejected.

[fol. 35] I'd say there are not a great number of them that are rejected. I don't recall a great number. Unless we know some reason why a person should not serve on a jury, we pass them for jury duty. I should think that element or phase or fact, so far as moral character is concerned, was very, very small in percentage. As to intelligence, the percentage rejected would be extremely small. I don't recall anyone except when someone knows a man is mentally incapacitated and that would be almost never. The names on the jury list were never separated, their names went into the box as they were given to us by the tax collector and no question was asked as to which—in fact, you couldn't separate them.

As far as I know, Mr. Lentz has never reported to us any separate list for colored persons of 236 for 1941. They are all brought in and put in the box together. I have no information about a separate colored list of 255 names prepared in the biennial jury list of 1945. I have never asked Mr. Lentz to separate anything. I have turned them over to him with instructions to put them in the jury box. I would not know about two separate lists made up of white and colored. When they were brought in to us they were all in one basket, and we put all of them in the box. That is

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all I know. I didn't have anything to do with preparing the list.

I did not say that for the 1941 biennial jury list there were 8,834 names only put in the box. I said I did not know how many names were in the box at any year. No question was asked. I will not say that 8,834 out of 40,000 taxpayers in this county represents an unreasonably, unusually low number of names to go in the jury box. I have said it time and again that our Board did not select the names. They are turned over to Mr. Lentz and it is his duty to make up the list and present them to us. We do not at any time select the names to go into the jury box.

[fol. 36] I said that when Mr. Lentz brought in the names, no questions were asked as to who was in there. I don't know whether it is a fair representation or not to have for the biennial jury period commencing 1941, 8,834 names (both white and colored) and for the present year 1945, 10,622 of which number 10,367 are whites and 255 colored as compared with the total number of taxpayers in this county for each of these respective biennial periods. I have never examined it as to that. I guess it is a fair proportionate representation of names to go in the jury box of Forsyth County, from which juries, Grand Jury and Petit Juries, would be selected.

There is one Negro juror, viz: Jefferson H. Hairston, whose name was drawn out of the regular county jury box and who was summoned by the Sheriff for service on the Petit Jury at this term and who is now serving.

At this point, counsel for the State and the defendant argued the motion before the Court.

Ruling on Motion to Quash

Ruling of the Court: Motion to Quash, etc., denied. Exception by all defendants.

Exception No. 1

The Court: "Well, sir, Gentlemen, I am denying your motion. I am certainly not going to hold that my State law is unconstitutional in passing upon the eligibility of jurors

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and I find that there has not been a discrimination. This Grand Jury does not have to find a bill in this case."

(The following Findings of Fact were announced by the Court after the verdict was returned by the Jury and after sentence was imposed):

[fol. 37] In Superior Court of Forsyth County

Findings of Fact

The Court: "After hearing the evidence, both for the defendant and the State, upon the motion to quash the panel, etc., in the above entitled cause, the Court finds as a fact:

That the Commissioners of Forsyth County did prepare a list of scrolls for prospective jurors and placed said list in the jury box and that there was a fair representation of Negroes on said list and placed in said jury box; that there was no discrimination in the selection of the jury in regard to color or religion.

The Court further finds as a fact that the defendants are indicted upon a warrant and that the question of the selection of a Grand Jury is not germane in this Motion. The Court is of the opinion that the Commissioners of Forsyth County were careless in their preparation of scrolls but finds as a fact that when the scrolls were drawn from the box that they were scrutinized and passed on individually by the several Commissioners.

The Court further finds as a fact that the Commissioners have always ordered the Clerk of the Board to prepare a list of scrolls for prospective jurors from the complete and entire tax list, except for those names deleted by law."

The defendants except to the foregoing Findings of Fact.

Exception No. 2

[fol. 38] In Superior Court of Forsyth County

Plea of Not Guilty

The defendant comes into open court and through his counsel, W. R. Dalton and Chas. H. Livengood, enters a

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plea of not guilty. Whereupon the following good and lawful persons are sworn and impaneled to try the issues of travers joined, to-wit: F. T. Disher, W. H. Wright, A. M. Owen, Thos. Tesh, W. W. Hauser, Norman H. Kiger, Gurney W. Borender, C. B. McClain, Jack Bodenhamer, P. B. Chumley, J. R. Yokeley, and James C. Whicker, and for their

VERDICT—FIND THE DEFENDANT GUILTY

IN SUPERIOR COURT OF FORSYTH COUNTY

JUDGMENT

It is the judgment of the Court that he, John Henry Brunson, be confined in the common jail of Forsyth County for fifteen months and be assigned work on the roads under the supervision of the State Highway & Public Works Commission.

To the judgment rendered the defendant excepts and gives notice of appeal to the Supreme Court in open Court.

Exception No. 3

IN SUPERIOR COURT OF FORSYTH COUNTY

APPEAL ENTRIES

Upon the coming in of the verdict the defendant made a motion for a new trial on the grounds of errors committed during the progress of the trial. Motion overruled and defendant excepts. Notice of appeal given by the defendant in open Court.

Exception No. 4

Upon the rendition of judgment the defendant excepts and gives notice of appeal to the Supreme Court in open court. Notice of appeal waived. Appeal bond in the sum of $100.00 is adjudged sufficient. Appearance bond in the sum of $1,000 is adjudged sufficient. The defendant is allowed 75 days to make up and serve case on appeal and the State is allowed 40 days thereafter to serve countercase or file exceptions. This November 15, 1946.

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[fol. 39] Recognizance of Defendant dated November 15, 1946, in the sum of $1,000 appears in the original transcript of appeal.

Appeal Bond for costs in the sum of $100.00 appears in the original transcript of appeal.

IN SUPERIOR COURT OF FORSYTH COUNTY

ASSIGNMENTS OF ERROR

The defendant hereby assigns and groups his assignments of error as follows:

1. That His Honor erred in denying defendant's "Motion to Quash, etc." on the grounds and for the reasons set out in said "Motion To Quash, etc." (R. pp. 5-9).

Exception No. 1 (R. p. 36)

2. That His Honor erred in making and finding his "Findings of Fact" (R. p. 37) on the grounds and for the reasons that said "Findings of Fact" are not in accordance with and are not supported by the evidence adduced thereon at this hearing; that said "Findings of Fact" run counter to and are in plain violation of the due process and equal protection Clauses of the 14th Amendment to the Constitution of the United States and also run counter to and in plain violation of the provisions of United States Code Annotated, Title 8, Section 44, and other provisions of the United States Code or Statute Laws. That there is no evidence to support said "Findings of Fact."

Exception No. 2 (R. p. 37)

3. That His Honor erred in rendering Judgment against the defendant ordering him confined in the common jail of Forsyth County and to be assigned work on the roads, etc.

Exception No. 3 (R. p. 38)

4. That His Honor erred in overruling (denying) defendant's Motion for a new trial on the grounds of errors com-
[fol. 40] mitted during the progress of the trial, which mo-

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tion was lodged upon the coming in of the verdict of the jury.

Exception No. 4 (R. p. 38)

The foregoing constitutes the appellant (defendant's) Statement of Case on Appeal in the case of State v. John Henry Brunson, and is made out and submitted, this January 27, 1947, by:

W. R. Dalton, Attorney for Appellant (Defendant).

STATE OF NORTH CAROLINA,
Forsyth County:

I hereby accept service of the foregoing appellant's (defendant) Statement of Case on Appeal in the case of State v. John Henry Brunson, and I acknowledge receipt of a copy of said Statement of Case on Appeal.

Walter E. Johnston, Jr., Solicitor of the 11th Judicial District of North Carolina.

Jan. 27, 1947.

AGREEMENT AS TO CASE ON APPEAL

The foregoing case is agreed to and it is to be and constitute the case on appeal and the transcript of the record in the Supreme Court.

This April 12, 1947.

J. Erle McMichael, Solicitor, and Walter E. Johnston, Jr., Solicitor (beginning January 1, 1947).

W. R. Dalton and I. Duke Avnet, Attorneys for Defendant.

(Transcript certified by clerk superior court.)

[fol. 41] SUPREME COURT OF NORTH CAROLINA, SPRING TERM, 1947

No. 724

STATE

v.

JOHN HENRY BRUNSON

Appeal by Defendant from Rousseau, J., November Term, 1946, of Forsyth

Criminal prosecution on warrant charging the defendant, a man over eighteen years of age, with assault upon a female, tried originally in the Municipal Court of the City of Winston-Salem and again *de novo* on appeal to the Superior Court of Forsyth County.

Verdict: Guilty.
Judgment: Fifteen months on the roads.
The defendant appeals, assigning errors.

Attorney-General McMullen and Assistant Attorneys-General Bruton, Rhodes and Moody for the State.
William Reid Dalton for defendant.

Per CURIAM:

The exceptions relied on here are the same as those presented in the case of S. v. Koritz, et al., No. 723, herewith decided, and are controlled by the rulings in that case.

No Error.

A true copy.

Adrian J. Newton, Clerk of the Supreme Court of North Carolina. (Seal.)

[fol. 42] [Endorsed:] No. 724. Thursday, May 29, 1947. State v. Brunson. Per Curiam. No Error. Filed Jun. 5, 1947. In the Office of Clerk, Supreme Court of North Carolina.

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[fol. 43] JUDGMENT

SUPREME COURT OF NORTH CAROLINA, SPRING TERM, 1947

No. 724. Forsyth County

STATE

VS.

JOHN HENRY BRUNSON

This cause came on to be argued upon the transcript of the record from the Superior Court Forsyth County: Upon consideration whereof, this Court is of opinion that there is no error in the record and proceedings of said Superior Court.

It is therefore considered and adjudged by the Court here that the opinion of the Court, be certified to the said Superior Court, to the intent that proceedings be had therein in said cause according to law as declared in said opinion. And it is considered and adjudged further, that the Defendant do pay the costs of the appeal in this Court incurred, to wit, the sum of Twenty-two and 50/100 dollars ($22.50), and execution issue therefor.

A True Copy.

Adrian J. Newton, Clerk of the Supreme Court.
(Seal.)

[fol. 44] IN THE SUPREME COURT OF THE STATE OF NORTH CAROLINA, SPRING TERM, 1947

No. 724. Forsyth County

STATE

V.

JOHN HENRY BRUNSON

Appeal Docketed, 14 April, 1947.
Case Argued, 21 May, 1947.
Opinion Filed, 5 June, 1947.
Final Judgment Entered, 5 June, 1947.
Opinion Certified to the Superior Court of Forsyth County, 12 June, 1947.

I, Adrian J. Newton, Clerk of the Supreme Court of North Carolina, do hereby certify the foregoing to be a full, true

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and perfect copy of the record and proceedings in the above entitled case as the same now appear from the originals on file in my office.

I further certify that the rules of this Court prohibit filing of petitions to rehear in criminal actions.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Court at office in Raleigh, North Carolina, this the 23rd day of July, 1947.

Adrian J. Newton, Clerk of the Supreme Court of the State of North Carolina. (Seal.)

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[fol. 45] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1947

No. 292

JOHN HENRY BRUNSON, Petitioner,

vs.

STATE OF NORTH CAROLINA

ORDER ALLOWING CERTIORARI—Filed December 15, 1947

The petition herein for a writ of certiorari to the Supreme Court of the State of North Carolina is granted, and the case is transferred to the summary docket.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

[fol. 46] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1947

No. 293

ESSIE KING, Petitioner,

vs.

STATE OF NORTH CAROLINA

ORDER ALLOWING CERTIORARI—Filed December 15, 1947

The petition herein for a writ of certiorari to the Supreme Court of the State of North Carolina is granted, and the case is transferred to the summary docket.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

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[fol. 47] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1947

No. 294

MARTHA JONES, Petitioner,

vs.

STATE OF NORTH CAROLINA

ORDER ALLOWING CERTIORARI—Filed December 15, 1947

The petition herein for a writ of certiorari to the Supreme Court of the State of North Carolina is granted, and the case is transferred to the summary docket.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

[fol. 48] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1947

No. 295

LOUISE JAMES (Alias Moore), and EVELYN CHILDS, Petitioners,

vs.

STATE OF NORTH CAROLINA

ORDER ALLOWING CERTIORARI—Filed December 15, 1947

The petition herein for a writ of certiorari to the Supreme Court of the State of North Carolina is granted, and the case is transferred to the summary docket.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

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[fol. 49] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1947

No. 296

LIDA MAE WATKINS, CELIA ANN PURCELL, JAMES EDWARD STURDIVANT, et al., Petitioners,

vs.

STATE OF NORTH CAROLINA

ORDER ALLOWING CERTIORARI—Filed December 15, 1947

The petition herein for a writ of certiorari to the Supreme Court of the State of North Carolina is granted, and the case is transferred to the summary docket.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

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[fol. 50] IN THE SUPREME COURT OF THE UNITED STATES,
OCTOBER TERM, 1947

No. 292

JOHN HENRY BRUNSON, (Petitioner),

vs.

STATE OF NORTH CAROLINA, (Respondent)

No. 293

ESSIE KING, (Petitioner),

vs.

STATE OF NORTH CAROLINA, (Respondent)

No. 294

MARTHA JONES, (Petitioner),

vs.

STATE OF NORTH CAROLINA, (Respondent)

No. 295

LOUISE JAMES (Alias Moore), and EVELYN CHILDS,
(Petitioners)

vs.

STATE OF NORTH CAROLINA, (Respondent)

No. 296

LIDA MAE WATKINS, CELIA ANN PURCELL, JAMES EDWARD
STURDIVANT, LOUVENIA WALLACE, (Petitioners),

vs.

STATE OF NORTH CAROLINA, (Respondent)

STIPULATION AS TO RECORDS—Filed December 20, 1947

Since it is a fact that in all five of these cases, namely, Nos. 292, 293, 294, 295, and 296, the Motions to Quash, all of the evidence offered, the Findings of Fact, the Exceptions taken, and the Assignments of Error entered, are

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identically the same and raise and present the same questions of law, it is stipulated and agreed that it is not essential or necessary to a consideration of these cases that five separate and distinct Records be printed but that one Record only, namely that in No. 292, "John Henry Brunson vs. State of North Carolina" shall be printed and that this Record in No. 292 may be used and considered by the Court in hearing and passing upon the other cases, Nos. 293, 294, 295, and 296.

It is further stipulated that all five of the above numbered cases may be treated and considered and briefed in one Brief.

Wm. Reid Dalton, Nathan Witt, Attorneys for Petitioners. Harry McMullen, Attorney General of North Carolina, Counsel for Respondent.

[fol. 51] [File endorsement omitted.]

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FILED
AUG 23 1947

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D., 1947

No. 292 to 296

(1) JOHN HENRY BRUNSON, *Petitioner,*

vs.

STATE OF NORTH CAROLINA, *Respondent.*

(2) ESSIE KING, *Petitioner,*

vs.

STATE OF NORTH CAROLINA, *Respondent.*

(3) MARTHA JONES, *Petitioner,*

vs.

STATE OF NORTH CAROLINA, *Respondent.*

(4) LOUISE JAMES (Alias MOORE), and EVELYN CHILDS, *Petitioners,*

vs.

STATE OF NORTH CAROLINA, *Respondent.*

(5) LIDA MAE WATKINS, CELIA ANN PURCELL, JAMES EDWARD STURDIVANT, and LOUVENIA WALLACE, *Petitioners,*

vs.

STATE OF NORTH CAROLINA, *Respondent.*

PETITION FOR WRITS OF CERTIORARI TO THE SUPREME COURT OF NORTH CAROLINA AND BRIEF IN SUPPORT OF PETITION.

WILLIAM REID DALTON,
NATHAN WITT,
Attorneys for Petitioners.

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IN THE

Supreme Court of the United States

OCTOBER TERM, A. D., 1947

No.------

(1) JOHN HENRY BRUNSON *vs.* N. C.

(2) ESSIE KING *vs.* N. C.

(3) MARTHA JONES *vs.* N. C.

(4) LOUISE JAMES (Alias MOORE), and EVELYN CHILDS *vs.* N. C.

(5) LIDA MAE WATKINS, CELIA ANN PURCELL, JAMES EDWARD STURDIVANT, and LOUVENIA WALLACE *vs.* N. C.

PETITION FOR WRITS OF CERTIORARI TO THE SUPREME COURT OF NORTH CAROLINA AND BRIEF IN SUPPORT OF PETITION.

PETITION FOR WRITS OF CERTIORARI

The petitioners, (1) John Henry Brunson, (2) Essie King, (3) Martha Jones, (4) Louise James (Alias Moore) and Evelyn Childs, and (5) Lida Mae Watkins, Celia Ann Purcell, James Edward Sturdivant, and Louvenia Wallace, respectfully petition this

Honorable Court for Writs of Certiorari to the Supreme Court of North Carolina, in their respective, above named, five cases.

These five cases were tried separately in the Superior Court of Forsyth County, North Carolina, before the same Judge, namely Hon. J. A. Rousseau, at the November Term 1946, and with the same counsel representing all of the defendants and with the same Motion to Quash filed in each case, separately, by each defendant; all of these Motions to Quash were overruled. to which rulings each defendant duly excepted as well as to the Findings of Fact thereon. As the evidence is exactly the same in all of these five cases, and as the same questions are presented, petitioners are making up and including all of these five cases in one Petition For Writs of Certiorari, and Brief. The only difference in these five cases being in the names of the respective defendants, the nature of the offense charged in the respective warrants, and in the time or term of sentence imposed in the respective judgments.

STATEMENT OF THE MATTER INVOLVED.

These five cases present serious questions relating to the constitutional rights under the Fourteenth Amendment of the Federal Constitution to trial in a State court by a jury free from arbitrary and systematic exclusion and limitation of Negro and White citizens.

From the heat engendered by picket line controversies in a laundry workers strike and labor dispute in Winston-Salem, North Carolina, arose the arrest of the petitioners.

Petitioner, John Henry Brunson, a Negro, was charged in the Municipal Court of Winston-Salem,

N. C., with an alleged assault on Christine Davis, a female, on Oct. 23, 1946, and was tried on Oct. 30, 1946, and sentenced to fifteen months on the roads (no jury being allowed or provided for in the creation and set-up of said Municipal Court of Winston-Salem). An appeal was taken to the Superior Court of Forsyth County.

Petitioner, Essie King, a Negro, was charged in the Municipal Court of Winston-Salem, N. C., with disturbing the peace and disorderly conduct, on Oct. 29, 1946, and was tried on Oct. 30, 1946, and sentenced to 30 days in jail. An appeal was taken to the Superior Court of Forsyth County.

Petitioner, Martha Jones, a Negro, was charged in the Municipal Court of Winston-Salem, N. C., with disturbing the peace and disorderly conduct on Oct. 28, 1946, and was tried on Oct. 31, 1946, and sentenced to 30 days in jail. An appeal was taken to the Superior Court of Forsyth County.

Petitioner, Louise James, (Alias Moore), a Negro, was charged in the Municipal Court of Winston-Salem, N. C., with malicious injury to real property on Nov. 4, 1946, and was tried on Nov. 5, 1946, and sentenced to 30 days in jail. An appeal was taken to the Superior Court of Forsyth County.

Petitioner, Evelyn Childs, a Negro, was charged in the Municipal Court of Winston-Salem, N. C., with malicious injury to real property on Nov. 4, 1946, and was tried on Nov. 6, 1946, and sentenced to 30 days in jail. An appeal was taken to the Superior Court of Forsyth County.

Petitioner, Lida Mae Watkins, a Negro, was charged in the Municipal Court of Winston-Salem,

N. C., under four (4) warrants, all sworn out on Oct. 29, 1946, with;

(1) An assault with a deadly weapon, to-wit, a stick, on Ethel Crews.

(2) An assault with a deadly weapon, to-wit, a stick, on G. W. Lancaster.

(3) Resisting officers while in the discharge of their duties.

(4) An assault with a deadly weapon, to-wit, a stick, on R. F. Holcomb,

and was tried on Oct. 30, 1946, and sentenced to six months in jail, three months in jail, six months in jail, and three months in jail, respectively. An appeal was taken to the Superior Court of Forsyth County in all of these four cases against Lida Mae Watkins.

Petitioner, Celia Ann Purcell, a Negro, was charged in the Municipal Court of Winston-Salem, N. C., with an assault with a deadly weapon, to-wit, a stick, on Estelle Britt, on Oct. 29, 1946, and was tried on Oct. 30, 1946, and sentenced to six months in jail. An appeal was taken to the Superior Court of Forsyth County.

Petitioner, James Edward Sturdivant, a Negro, was charged in the Municipal Court of Winston-Salem, N. C., with an assault on Estelle Britt, a female, on Oct. 29, 1946, and was tried on Oct. 30, 1946, and sentenced to six months in jail. An appeal was taken to the Superior Court of Forsyth County.

Petitioner, Louvenia Wallace, a Negro, was charged in the Municipal Court of Winston-Salem, N. C., with an assault on Estelle Britt, on Oct. 29, 1946, and was tried on Oct. 30, 1946, and sentenced to 30 days in jail. An appeal was taken to the Superior Court of Forsyth County.

At the November Term 1946 of the Superior Court of Forsyth County, a motion to quash the warrant of arrest and for the discharge of the jury panel, was raised in each case the question of the arbitrary and systematic exclusion of Negro citizens and the limitation of the number of White citizens for jury service by the Board of County Commissioners for Forsyth County. There was also raised in each case, the question of the constitutional validity of the statutory prerequisites for jury service. Considerable testimony was taken in connection with the motion to quash, and can be briefly summarized as follows:

Jury lists are made up for jury service in Forsyth County, N. C., once every two (2) years by the Board of County Commissioners, from the tax records of the County, Forsyth County in 1945 (the last year in which biennial jury lists were prepared) has a population of 150,000 persons, 45 per cent of which were colored. Yet evidence adduced showed that no Negro had been summoned for service on the grand jury throughout the entire year 1946, up to and including the November Term 1946 of said Superior Court, the term at which these five cases at bar were tried. While one Negro was summoned and served on the petit-jury at the November Term 1946, namely, Jefferson H. Hairston, the uncontradicted testimony of the Sheriff of Forsyth County, Ernie G. Shore, who was charged with the responsibility for service of all jurors in Forsyth County, was that perhaps a dozen colored persons in all had been summoned for jury service, grand and petit, over a period of the last ten (10) years. An active trial lawyer, Mr. Slawter of Winston-Salem, with 31 years experience, was unable to state whether there had been as many as

10 Colored jurors actually serving on grand and petit juries in the last ten years.

The Board of County Commissioners, by their own admission, maintained separate lists for colored jurors for the biennial years 1941 and 1945. Of a total number of approximately 4,078 jurors serving over a period extending from October 1936 to October 1946, approximately 12 were of the Negro race.

As will appear in detail from table contained in petitioner's brief (Page 29), 90 percent to 95 percent of eligible Negro Jurors, and 55 per cent of eligible White jurors, were subjected to arbitrary discrimination and exclusion from the jury listings prepared by the County Commissioners for the said 10-year period.

With regard to the provisions of the North Carolina General Statutes claimed to be unconstitutional, Chapter 9 thereof restricts the jury lists to taxpayers who are either property owners or poll-tax payers. Furthermore, under North Carolina General Statutes, Chapter 105, Section 341, poll-tax payers include only males between the ages of 21 and 50. Therefore, if a male over 50 possesses no property, he is excluded from the jury lists by the terms of the Statute, Chapter 9. There is an additional requirement that talesmen be freeholders, Chapter 9, Section II.

The Superior Court of Forsyth County nevertheless made a finding that no discrimination had been shown, to which finding the petitioner duly excepted thereto. The Supreme Court of North Carolina found no error on the appeal. In the Koritz case (227 N. C. 552, State vs. Koritz, et al), the Supreme Court of North Carolina declared that the petitioners therein named had been contented with the jury drawn

without exhausting all of their peremptory challenges, although such contentment is definitely not discernible in the record in that case, and was not expressed in fact, as appears from the exceptions taken to the Court's Order and rulings, while in the cases at bar there was no challenge to the poll whatsoever, peremptory,—petitioner's challenge being to the array only of the grand jury and regular petit jury drawn out of the regular County jury-box to serve at the November Term 1946 of the Superior Court of Forsyth County, to which term petitioners' case was called for trial. Again in the cases at bar there was no Order made in the Superior Court of Forsyth County directing a special venire of 25 men to be summonsed, with 10 of the number to be Negroes, as was done in the Koritz case, (227 N. C. 552, State vs. Koritz, et al). In the cases at bar there is nothing in the record below in the Supreme Court of North Carolina showing or declaring that petitioner was contented or satisfied with the grand or petit jury drawn out of the regular County jury-box to serve at the November Term 1946. And yet the Supreme Court of North Carolina in its opinions in the cases at bar holding that its rulings in the Koritz case control its rulings in the cases at bar, in effect, declares that petitioner has been contented with the jury drawn.

THIS COURT HAS JURISDICTION.

This Court has jurisdiction under Sec. 237 (b) of the Judicial Code (U. S. Code, Title 28, Sec. 344 b). The Supreme Court of North Carolina decided these cases on June 5, 1947, and certified its decisions on June 12, 1947.

THE QUESTIONS PRESENTED.

1. Did the Board of County Commissioners of Forsyth County arbitrarily and systematically discriminate against Negro and White citizens in jury selection contrary to the 14th. Amendment of the Federal Constitution and the laws thereunder?

2. Do the Statutes of North Carolina permitting discrimination against White and Negro citizens in jury selection violate the 14th. Amendment of the Federal Constitution?

3. Did the petitioner invoke the proper procedure to challenge the validity and constitutionality of the practices used by the County and the Court in drawing and selecting the jury?

REASONS RELIED UPON FOR ALLOWANCE OF WRIT.

The almost total absence of Negroes from juries in Forsyth County for a period of ten (10) years—which evoked no contradiction from the State — would, standing by itself, indicate discrimination in a County whose colored population equaled 45 percent of the total. And the presence of only 12 Negroes on juries over a period of ten (10) years, is, it is submitted, the equivalent of total exclusion. Hill vs. Texas, 316 U. S. 400; Smith vs. Texas, 311 U. S. 128. In addition, the exclusion of between 90 and 95 percent of otherwise eligible Negro citizens, and 55 percent of otherwise eligible White citizens, from jury lists prepared by the County Commissioners from tax records furnishes convincing proof of intention to discriminate and confine the jury service to a small, selective circle. Such actions as maintaining a separate list of jurors marked "Colored" de-

note active discrimination. The full factual appraisal of the uncontrovertible existence of systematic and arbitrary exclusion of Negro and White jurors is developed at length by the petitioner in his supporting brief. These practices are in sharp conflict with the decisions of this court, which has declared such systematic and arbitrary discrimination violative of the 14th. Amendment. The Supreme Court of the United States has been careful to assume jurisdiction in a number of cases where, as in the case at bar, evidence appeared that over a course of years, there had been systematic and discriminatory exclusion of members of the Negro race from jury panels. Hill vs. Texas, *supra;* Smith vs. Texas, *supra;* Pierre vs. Louisiana, 306 U. S. 354; Neal vs. Delaware, 103 U. S. 370; Norris vs. Alabama, 204 U. S. 587.

The Supreme Court of North Carolina merely accepted the conclusions of the Superior Court of Forsyth County that no discrimination had been shown, ignoring completely the agreed stipulation summarized in the petitioner's brief (Page 39), and the testimony of County officials, showing flagrant and systematic exclusion.

In its opinion, the Supreme Court of North Carolina made reference to the alleged contentment of the petitioner with the jury selected, because of failure to exercise peremptory challenges. But ten or more peremptory challenges would have been unavailing in providing a jury fairly and impartially drawn from the community and free of discrimination. Furthermore, the petitioner fully reserved his or her objection, as noted in the record. The remarks of the Supreme Court of North Carolina are consequently incomprehensible in this connection to the petitioner.

While it is true that earlier decisions of this court have apparently recognized State requirements of property ownership, tax payments, etc., as constitutional conditions precedent to jury service, yet it is submitted that present considerations call for re-examination of these disqualifying provisions. Where grave economic conflicts arise in communities, the exclusion of the propertyless from jury service can make trial by jury a mockery for the humble worker enmeshed in the coils of the law. This is the spirit that animates the decisions of this court in Thiel vs. Southern Pacific Company, 328 U. S. 136.

It is not the fixing of quotas for each race which makes for a fair trial by jury, but the absence of exclusionary practices against any race, class, or group of persons otherwise eligible that insures fairness in trial by jury.

If the jury was lacking in propriety because of its foundation on discriminatory practices, then the jury was unfit to try petitioner.

Petitioner first raised the questions of the constitutionality of the Statutes of North Carolina and the practices of the Board of County Commissioners of Forsyth County, in jury selection, by filing their motion to quash prior to the trial of the cause. This procedure has been followed in numerous cases coming to this court from common law jurisdictions. Hill vs. Texas, *supra;* Norris vs. Alabama, *supra;* Neal vs. Delaware, *supra.* The State of North Carolina is a common law State, (General Statutes of North Carolina, Chap. 4, Section I). Furthermore, the Supreme Court of North Carolina sanctions such procedure, State vs. Kirksey, 227 N. C. 445; State vs. Peoples, 131 N. C. 784; State vs. Daniels, 134 N. C. 641.

The Supreme Court of North Carolina, in its opinion in each of these five cases, stating that its rulings in the Koritz case (227 N. C. 552, State vs. Koritz, et al) were also controlling in the cases at bar, and thereby tieing the opinions up together, and declaring that the petitioner was satisfied with or contented with the grand jury and the petit jury drawn from the regular County jury box, or that petitioner's rights were waived, is most vigorously denied on the basis of the exceptions interposed, as shown by the record.

This procedural technicality (which is unsound and which was not urged by the State itself in the Superior Court of Forsyth County or on appeal to the Supreme Court of North Carolina) should not under any circumstances preclude this Court from consideration of serious questions involving basic and fundamental constitutional rights. Hormel vs. Helvering, 312 U. S. 552.

Shameful miscarriages of justice by juries which are not representative of the community, and which are not constitutionally selected, will continue without end if the facade of legality, such as erected in these cases by the public officials of Forsyth County, is allowed to obscure violations of the Fourteenth Amendment.

Equality under the law will remain a meaningless term in Forsyth County if its officials are not required to yield to the compulsions of the Fourteenth Amendment.

Respectfully submitted,

WILLIAM REID DALTON,
NATHAN WITT,
Attorneys for Petitioners.

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D., 1947

No.------

(1) JOHN HENRY BRUNSON *vs.* N. C.

(2) ESSIE KING *vs.* N. C.

(3) MARTHA JONES *vs.* N. C.

(4) LOUISE JAMES (Alias MOORE), and EVELYN CHILDS *vs.* N. C.

(5) LIDA MAE WATKINS, CELIA ANN PURCELL, JAMES EDWARD STURDIVANT, and LOUVENIA WALLACE *vs.* N. C.

BRIEF IN SUPPORT OF PETITION FOR WRITS OF CERTIORARI.

The Opinion Below

As the opinion of the Supreme Court of North Carolina in the Koritz, et al, case (227 N. C. 552) is decisive of and becomes also the opinion of the Su-

preme Court of North Carolina in each and all of these five cases, it is reproduced below:

"Supreme Court of North Carolina—Spring Term, 1947, No. 723—*State vs. Philip Milton Koritz, Cal Roberson Jones, and Margaret DeGraffenreid.*

Appeals by defendants from Rousseau, Jr., October Term, 1946, of Forsyth.

Criminal prosecutions on four separate warrants charging the defendants, Philip Milton Koritz, Cal Roberson Jones, Margaret DeGraffenreid, and Betty Keels Williams, severally, with resisting, delaying or obstructing a police officer of the City of Winston-Salem in discharging or attempting to discharge a duty of his office in violation of G. S. 14-223, consolidated and tried together as all of the alleged offences arise out of the same transaction or the same series of transactions.

The cases were tried originally in the Municipal Court of the City of Winston-Salem and again *de novo* on appeal to the Superior Court of Forsyth County.

When the cases were called and consolidated for trial in the Superior Court, the defendants first interposed a motion to quash the warrants and to discharge the panel of petit jurors because of discrimination against the Negro race in making up the jury list from which the jurors were summoned for the term. Three of the defendants are Negroes; one is a White man. Several days were consumed in hearing the motion, with both sides offering evidence in respect of the matter.

The defendants offered evidence tending to show, according to their contention, that the number of Negroes selected for jury service out of the total number of eligible Negroes in the County was disproportionately small to the number of Whites selected in the same manner, and that the use of separate tax lists for Whites and Negroes was discriminatory against both races. Out of 23,450 possible eligible White jurors, only 10,367 names appear in the box; and out of 4,900 possible Negro jurors only 255 names are in the box. The result is discrimination against both races, so the defendants say.

The State, on the other hand, offered evidence tending to show, so it contends, that there was no studied or deliberate discrimination against either race on the part of the jury commissioners, and that the large number of Whites as compared with the number of Negroes who were actually selected for jury service was not the result of any prejudice or intentional discrimination against the latter race. Walter A. Mickle, the County-City Tax Collector, and former deputy sheriff who assisted in the annual drawing of juries from 1936 to 1946 says: 'I never heard any commissioner discuss whether a man was black or white, that I remember, during the time I was in the office as Chief Deputy, at the drawing of the jury.'

After hearing the evidence, the trial court made the following findings:

1. That is the defendants are being tried upon warrants, and not upon bills of indictment, the method of selecting grand juries in Forsyth County is not germane to the present motion.

2. That a fair representation of Negroes was placed in the jury box by the commissioners, and that there was no intentional discrimination in preparing the jury list either in respect of color or religion.

The court thereupon overruled the motion to quash the warrants and the jury panel. Defendants excepted to the findings and rulings. Exceptions Nos. 1 and 2.

Announcement was then made that each defendant would have six peremptory challenges, making a total of 24, and that there were only 20 regularly drawn and summoned jurors. The court ordered that 25 talesman be summoned, not less than ten of whom should be Negroes. On inquiring of counsel for defendants whether the talesmen should be drawn from the box or summoned by the sheriff from among the persons qualified to act as jurors in the County, counsel for the defendants, Mr. Avnet, replied: 'In the light of our motion, I would not care to indicate; just leave that matter for your Honor.' It was agreed that a venire of 25 would be sufficient, but defendants excepted to the order. Exception No. 3.

The jury as finally selected was composed of seven Whites and five Negroes. Six were taken from those regularly drawn and summoned for the term, and six from the special venire. The defendants used 23 of their 24 peremptory challenges, one being in respect of a Negro on the special venire. They still had one peremptory challenge left when the jury was completed. The court found that the proportion of Negroes on the jury,

as finally selected, was generous to that race. Exception by the defendants. Exception No. 4.

Verdicts: Guilty as to Philip Milton Koritz, Cal Roberson Jones, and Margaret DeGraffenreid. Not guilty as to Betty Keels Williams.

Judgments: 12 months on the roads as to Philip Milton Koritz; 10 months on the roads as to Cal Roberson Jones; and eight months on the roads as to Margaret DeGraffenreid.

The defendants appealed, assigning errors.

Attorney-General McMullan, and Assistant Attorneys-General Bruton, Rhodes, and Moody, for the State.

William Reid Dalton, I. Duke Avnet, and Harold Buchman, for defendants.

Stacy, C. J. The defendants have abandoned all their exceptions, save the first four which go to the competency of the petit jurors selected to try the consolidated cases. When all is said and done in respect to these exceptions, we are met with the paramount fact that the jury as finally selected was satisfactory to the defendants, and they were not required to take any juror over objection. They announced their contentment with the jury without exhausting all their peremptory challenges. It was composed of 7 White men and 5 Negroes.

In respect of special veniremen summoned to serve as petit jurors, a challenge to the array may be interposed for cause; and if this be overruled, challenges to the polls are still available. S. vs. Kirksey, 227 N. C. 445; S. vs. Levy, 187 N. C. 581; 122 S. E. 386. To present an exception on rulings to challenge to the polls, the appellant is required to exhaust his peremptory challenges and then undertake to challenge another juror. Oli-

phant vs. R. R., 171 N. C. 303, 88 S. E. 425. The court's action in the matter must be hurtful and its effect unavoidable before it will be held to vitiate the trial. S. vs. Cockman, 60 N. C. 484; S. vs. Benton, 19 N. C. 196.

The trial court was at pains to see that every opportunity was afforded for the selection of a fair and impartial jury. The defendants would be entitled to no more on a new trial, and this they have already had. S. vs. Levy, 187 N. C. 581, 122 S. E. 386; S. vs. Sulton, 142 N. C. 569, 54 S. E. 841; S. vs. English, 164 N. C. 497, 80 S. E. 72; S. vs. Bohanon, 142 N. C. 695, 55 S. E. 797. Their right is not to select but to reject jurors. Having been tried by twelve jurors who were unobjectionable to them, the defendants have no valid ground to urge that they have been prejudiced by the composition of the jury. S. vs. Pritchett, 106 N. C. 667, 11 S. E. 375; S. vs. Hensley, 94 N. C. 1021. 'The defendant did not exhaust his peremptory challenges . . When such is the case, the objection to a juror who could have been rejected peremptorily is not available.' S. vs. Bohanon, supra; Oliphant vs. R. R., 171 N. C. 303, 88 S. E. 425.

The trial court was obviously correct in holding that the composition of the grand jury could in no way effect the defendants. They were tried on warrants sworn out in the Municipal Court, and not on bills of indictment returned by the grand jury, as was the case in S. vs. Peoples, 131 N. C. 784, 42 S. E. 814. No rights of theirs were passed upon by the grand jury. The question is put aside as irrelevant. The case of Smith vs. Texas, 311 U. S. 128, 85 L. Ed. 84, strongly relied upon by the de-

fendants, dealt with the composition of a grand jury. It is inapplicable here.

The principal point, argued by the defendants, is the manner in which the petit jurors were selected. Six regular jurors who were summoned for the term did serve on the jury, and it is these jurors of which the defendants now complain, albeit they might have been excused with or without cause. It has been held in a number of cases that mere irregularity on the part of the jury commissioners in preparing the jury list, unless obviously, designedly, or intentionally discriminatory, would not vitiate the list or afford a basis for a challenge to the array. S. vs. Daniels, 134 N. C. 641, 46 S. E. 743; S. vs. Kirksey, ante. ..... There is a finding on the present record, which is supported by the evidence, that no discrimination was intended or resulted from the manner in which the jury list was prepared. This suffices to sustain the ruling below, in the absence of some pronounced ill consideration. S. vs. Lord, 225 N. C. 354, 34 S. E. (2d) 205; S. vs. Henderson, 216 N. C. 99, 3 S. E. (2d) 357; S. vs. Bell, 212 N. C. 20, 192 S. E. 852; S. vs. Walls, 211 N. C. 487, 191 S. E. 232; S. vs. Cooper, 205 N. C. 657, 172 S. E. 199; Adkins vs. Texas, 325 U. S. 398, 89 L. Ed. 1692; Thomas vs. Texas, 212 U. S. 278, 53 L. Ed. 512.

In no event could the defendant Koritz profit from, or be hurt by, the alleged discrimination against the Negro race, as he is a member of the White race. S. vs. Sims, 213 N. C. 590, 197 S. E. 176.

Moreover, an absolute numerical ratio or balance between the races is not required, nor even possible perhaps. 'Some play must be allowed for

the joints of the machine.' M. T. & K. Ry. Co. vs. May, 194 U. S. 267. The problem involves more than mere mathematics or simple arithmetic. Equality can result from disparity in numbers, just as discrimination can result from equality among unequals. Character and intelligence are common to members of both races, with varying degrees of quality, dependent upon the individual, regardless of race. Nor can they be determined or measured by statute. The standard of qualification is prescribed by law. Its application is the place of the rub. The rules of fair play are not difficult to understand. They are only difficult to practice. The end in view is to get a fair cross section of community judgment. Hence, as local officials are in better position than outsiders to weigh the imponderables, their determination of the matter will be upheld unless too wide of the mark or 'unless it is so lacking in support in the evidence that to give it effect would work that fundamental unfairness which is at war with due process.' Adkins vs. Texas, 325 U. S. 398, 89 L. Ed. 1692; Louisville Gas Co. vs. Coleman, 277 U. S. 32.

It is the contention of the defendants, however, that our statutes on the subject contain inherent, constitutional infirmities in that the jury list is taken from the names of taxpayers of the county who are of good moral character and of sufficient intelligence. For this position they rely chiefly upon the recent case of Thiel vs. Southern Pacific Co., 328 U. S. 217, 90 L. Ed. 1181. The cited case is hardly an authority for the position taken. There, the Supreme Court of the United States was exercising a supervisory power over the administration of justice in the Federal Courts, and was not con-

cerned with any constitutional question. To like effect is the decision in McNabb vs. U. S., 318 U. S. 332, 87 L. Ed. 819.

Nor are cases of Norris vs. Alabama, 294 U. S. 587, 79 L. Ed. 1074; Smith vs. Texas, 311 U. S. 128, 85 L. Ed. 84; Glasser vs. United States, 315 U. S. 60, 86 L. Ed. 680, and others cited by the defendants, controlling on the instant record. The present case, in its factual situation, is strikingly similar to the one presented in the case of S. vs. Walls, *supra*, where a like ruling was upheld and on appeal to the Supreme Court of the United States, the decision was left undisturbed, the appeal being dismissed, 302 U. S. 635.

Of course, it is understood that the intentional, arbitrary and systematic exclusion of any portion of the population from jury service, grand or petit, on account of race, color or creed, is at variance with the Constitution and cannot stand. Adkins vs. Texas, 325 U. S. 398, 89 L. Ed. 1692. It is not the right of any party, however, to be tried by a jury of his own race, or to have a representative of any particular race on the jury. It is his right to be tried by a competent jury from which members of his race have not been unlawfully excluded. Ballard vs. United States, 67 S. C. Rep. 261, 91 L. Ed. (Adv. Op.) 195. 'The law not only guarantees the right of trial by jury, but also the right of trial by a proper jury; that is to say, a jury possessing the qualifications contemplated by law.' Hinton vs. Hinton, 196 N. C. 341, 145 S. E. 615.

The broadside challenge to the States' whole method of selecting jurors, regular, special and talesman, calls for only a passing word. There is

no mention of race, color or creed in any of the statutes on the subject, and whatever limitations are to be found therein apply equally to all races. It was said as early as Strauder vs. West Virginia, 100 U. S. 303, 25 L. Ed. 664, that within constitutional bounds a state may confine the selection of its jurors 'to males, to freeholders, to citizens, to persons within certain ages, or to persons having educational qualifications.' 31 Am. Jur. 594. The defendants boldly assert that they are immune from trial in Forsyth County so long as the present method of selecting juries obtains therein. The conclusion is a *non sequitur* on the facts as revealed by the record. The challenge is not sustained.

A careful perusal of the record leaves us with the impression that no reversible error has been made to appear in respect of the matters of which the defendants now complain. Hence, the verdict and judgments will be upheld.

No Error."

JURISDICTION.

The jurisdiction of this Court is involved under Section 237 (b) of the Judicial Code (U. S. Code, Title 28, Sec. 344 (b), The Supreme Court of North Carolina has decided a case "where is drawn in question the validity of a statute . . . . . on the ground of its being repugnant to the Constitution . . . . . or laws of the United States" . . . . . and "where . . . . . title, right, privilege, or immunity is specially set up or claimed . . . . . under the Constitution . . . . . or Statute of the United States . . . . . ." Judgment was entered in all of these five cases by the Supreme Court of North Carolina on June 5, 1947.

STATEMENT OF THE CASE.

Petitioner, John Henry Brunson, a Negro, was arrested for allegedly assaulting a female, Christine Davis, on Oct. 23, 1946, growing out of a laundry workers strike and labor dispute in Winston-Salem, N. C., and was tried and convicted in the Municipal Court of Winston-Salem, N. C., on Oct. 30, 1946, and sentenced to fifteen months on the roads, from which judgment he appealed to the Superior Court of Forsyth County, where, at the November Term 1946 the case was called for trial. Immediately upon the call of the case by the State for trial petitioner filed motion to quash the warrant and to discharge the petit jury and the grand jury summoned to serve at said November 1946 Term of said Superior Court, on the grounds of discrimination in jury service. The motion to quash was overruled and petitioner duly excepted thereto, as well as to the Court's Findings of Fact thereon.

Petitioner, Essie King, a Negro, was arrested for allegedly disturbing the peace and disorderly conduct on Oct. 29, 1946, growing out of a laundry workers strike and labor dispute in Winston-Salem, N. C., and was tried and convicted in the Municipal Court of Winston-Salem on Oct. 30, 1946, and sentenced to 30 days in jail, from which judgment she appealed to the Superior Court of Forsyth County, where, at the November Term 1946 the case was called for trial. Immediately upon the call of the case by the State for trial petitioner filed motion to quash the warrant and to discharge the petit jury and the grand jury summoned to serve at said November 1946 Term of said Superior Court, on the grounds of discrimination in jury service. The motion to quash was overruled and petitioner duly

excepted thereto, as well as to the Court's Findings of Fact thereon.

Petitioner, Martha Jones, a Negro, was arrested for allegedly disturbing the peace and for disorderly conduct on Oct. 29, 1946, growing out of a laundry workers strike and labor dispute in Winston-Salem, N. C., and was tried and convicted in the Municipal Court of Winston-Salem on Oct. 31, 1946, and sentenced to 30 days in jail, from which judgment she appealed to the Superior Court of Forsyth County, where at the November Term 1946 the case was called for trial. Immediately upon the call of the case by the State for trial petitioner filed motion to quash the warrant and to discharge the petit jury and the grand jury summoned to serve at said November 1946 Term of said Superior Court, on the grounds of discrimination in jury service. The motion to quash was overruled and petitioner duly excepted thereto, as well as to the Court's Findings of Fact thereon.

Petitioner, Louise James, (Alias Moore), a Negro, was arrested for malicious injury to real property on Nov. 4, 1946, growing out of a laundry workers strike and labor dispute in Winston-Salem, N. C., and was tried and convicted in the Municipal Court of Winston-Salem on Nov. 5, 1946, and sentenced to 30 days in jail, from which judgment she appealed to the Superior Court of Forsyth County, where at the November Term 1946 the case was called for trial. Immediately upon the call of the case by the State for trial petitioner filed motion to quash the warrant and to discharge the petit jury and the grand jury summoned to serve at said November 1946 Term of said Superior Court, on the grounds of discrimination in jury service. The motion to quash was overruled

and petitioner duly excepted thereto, as well as to the Court's Findings of Fact thereon.

Petitioner, Evelyn Childs, a Negro, was arrested for malicious injury to real property on Nov. 4, 1946, growing out of a laundry workers strike and labor dispute in Winston-Salem, N. C., and was tried and convicted in the Municipal Court of Winston-Salem, N. C., on Nov. 6, 1946, and sentenced to 30 days in jail, from which judgment she appealed to the Superior Court of Forsyth County, where at the November 1946 Term the case was called for trial. Immediately upon the call of the case by the State for trial petitioner filed motion to quash the warrant and to discharge the petit jury and the grand jury summoned to serve at said November 1946 Term of said Superior Court, on the grounds of discrimination in jury service. The motion to quash was overruled and petitioner duly excepted thereto, as well as to the Court's Findings of Fact thereon.

Petitioner, Lida Mae Watkins, a Negro, was arrested on Oct. 29, 1946, under four (4) warrants, charging her with;

(1) An assault with a deadly weapon, to-wit, a stick, on Ethel Crews,

(2) An assault with a deadly weapon, to-wit, a stick, on G. W. Lancaster,

(3) Resisting officers while in the discharge of their duties,

(4) An assault with a deadly weapon, to-wit, a stick, on R. F. Holcomb,

growing out of a laundry workers strike and labor dispute in Winston-Salem, N. C., and was tried and convicted in the Municipal Court of Winston-Salem, N. C., on Oct. 30, 1946, in all of said four cases, and

was sentenced to six months in jail, three months in jail, six months in jail, and three months in jail, respectively, from which judgments she appealed to the Superior Court of Forsyth County, where at the November 1946 Term these four (4) cases were called together for trial by the State. Immediately upon the call of these four cases by the State for trial petitioner filed motion to quash the warrant and to discharge the petit jury and the grand jury summoned to serve at said November 1946 Term of said Superior Court, on the grounds of discrimination in jury service. The motion to quash was overruled and petitioner duly excepted thereto, as well as to the court's Findings of Fact thereon.

Petitioner, Celia Ann Purcell, a Negro, was arrested for allegedly assaulting Estelle Britt with a deadly weapon, to-wit, a stick, on Oct. 29, 1946, growing out of a laundry workers strike and labor dispute in Winston-Salem, N. C., and was tried and convicted in the Municipal Court of Winston-Salem on Oct. 30, 1946, and sentenced to six months in jail, from which judgment she appealed to the Superior Court of Forsyth County, where at the November 1946 Term the case was called for trial by the State. Immediately upon the call of the case by the State for trial petitioner filed motion to quash the warrant and to discharge the petit jury and the grand jury summoned to serve at said November 1946 Term of said Superior Court, on the grounds of discrimination in jury service. The motion to quash was overruled and petitioner duly excepted thereto, as well as to the Court's Findings of Fact thereon.

Petitioner, James Edward Sturdivant, a Negro, was arrested for allegedly assaulting Estelle Britt, a female, on Oct. 29, 1946, growing out of a laundry

workers strike and labor dispute in Winston-Salem, N. C., and was tried and convicted in the Municipal Court of Winston-Salem on Oct. 30, 1946, and sentenced to six months in jail, from which judgment he appealed to the Superior Court of Forsyth County, where at the November 1946 Term the case was called for trial by the State. Immediately upon the call of the case by the State for trial petitioner filed a motion to quash the warrant and to discharge the petit jury and the grand jury summoned to serve at said November 1946 Term of said Superior Court, on the grounds of discrimination in jury service. The motion to quash was overruled and petitioner duly excepted thereto, as well as to the Court's Findings of Fact thereon.

Petitioner, Louvenia Wallace, a Negro, was arrested for allegedly assaulting Estelle Britt, on Oct. 29, 1946, growing out of a laundry workers strike and labor dispute in Winston-Salem, N. C., and was tried and convicted in the Municipal Court of Winston-Salem, N. C., on Oct. 30, 1946, and sentenced to 30 days in jail, from which judgment she appealed to the Superior Court of Forsyth County, where at the November 1946 Term the case was called for trial by the State. Immediately upon the call of the case by the State for trial petitioner filed a motion to quash the warrant and to discharge the petit jury and the grand jury summoned to serve at said November 1946 Term of said Superior Court, on the grounds of discrimination in jury service. The motion to quash was overruled and petitioner duly excepted thereto, as well as to the Court's Findings of Fact thereon.

The evidence of Petitioner's and the States' witnesses, in connection with the motions to quash, com-

prise the facts relevant to petitioner's appeal in all of these five cases.

PROOF OF DISCRIMINATION.

The petitioner's motion to quash, alleged, among other things that the grand and petit jurors drawn, summoned and serving at the November 1946 Criminal Term, at which petitioner's case was being tried, consisted of White people.

The law of the State of North Carolina requires that the jury lists from which the jurors are chosen shall be made up every two (2) years by each County (Chap. 9, Sec. I, General Statutes of N. C., 1943).

A stipulation of counsel was filed in each case from which it appears that a total of 51,916 names of prospective jurors were on the biennial jury lists of Forsyth County for the biennial period of 1935, 1937, 1939, 1941, 1943, and 1945. The stipulation also reveals a separate list of Negroes marked "Colored" was drawn in 1941, and 1945, as prospective jurors. It is uncontradicted that these lists marked "Colored" contained the names of all the colored jurors whose names appeared in the box for the biennial jury lists of 1941 and 1945. For the year 1941, the names of only 236 Negroes appear, in a total of 8,872 prospective jurors; for the term 1945 (which includes the term of the court during which the appellant was tried) the names of only 255 Negroes appear in a total of 10,622 prospective jurors.

The Clerk of the Superior Court for Forsyth County, William E. Church, testified he had made a search of his records for the purpose of showing the number of jurors who had been summonsed for jury service and the number who had actually served. Based on

his testimony, approximately 4,087 jurors, in all, served during the ten (10) years. Of this number a maximum of only 12 was of the Negro race.

A table is presented at this point illustrating and detailing the evidence of the witness, William E. Church, showing how the above figures are calculated.

Table

From Oct. 12, 1936, through July 11, 1938 (1¾ yrs.)		
Total number summoned	1,012	
Excused from service	113	
Total serving		899
From July 12, 1938, through January 1, 1942 (3½ yrs.)		
Total number summoned	2,024	
Excused from service,	226	
Total serving,		1,798
(Note: Witness Church testified that the number summoned and excused for this period was in the same ratio as in the preceding period.)		
From January 1, 1942, to (Spring) March 1, 1946 (4 1/6 yrs.)		
Total number summoned	1,204	
(Note: The witness testified that during the War period the number drawn and summoned was in a ratio of about 50 per cent of the number in the preceding periods.)		

Number excused based on same ratio	134	
Total serving		1,070
From March 1, 1946, to (Oct. Term Court, 1946) Oct. 7, 1946, (7½ mos.)		
Total number summoned,	360	
(Note: The witness testified that the number summoned for this period was in the same ratio as in the 1936 to 1938 period.)		
Number excused	40	
Total serving		320
GRAND TOTAL SERVING FROM Oct. 12, 1936 TO Oct. 19, 1946, (or a period of ten years)		4,087
TOTAL COLORED SERVING ON JURY DURING 10 YEAR PERIOD	12	
TOTAL WHITE SERVING ON JURY DURING 10 YEAR PERIOD	4,075	
		4,087

The defendant's first witness was Margaret Bell, an employee of the Winston-Salem Chamber of Commerce, who testified that one of her duties was to collect data on the population census of Forsyth County. She testified further that the last United States census for Forsyth County in 1940 showed a population of 126,475 persons, of whom

approximately 45% were Colored and 55% were White. An unofficial estimate of the 1946 population advanced by her was 150,000 persons, with 45% being Colored.

Virgil W. Joyce, the County Tax Supervisor for Forsyth County since 1938, estimated tax listings, from which the jury lists are required by law to be taken, of 43,000 taxpayers of whom 32,500 are White and 4,000 Colored. He referred to 3,000 additional colored garnishees for poll taxes and an additional 1,000 white persons delinquent in poll taxes only. He estimated that 10% of the tax listers of Forsyth County are women; 3% to 5%, non-residents, and 5% to 10% as guardians and guardian accounts.

The County-City Tax Collector, Walter A. Mickle, testified that 97% of the taxes levied were collected for the year 1945, including the taxes levied on the 3,000 Colored delinquents and the 1,000 White delinquents.

The Sheriff of Forsyth County, Ernie G. Shore, (who had held office since 1936) testified that no colored people were drawn or summoned for service on the grand jury for the present term of the Superior Court of Forsyth County, and that only one Negro, Jefferson H. Hairston, had been drawn and summoned for service, and was serving as a petit-juror at the present term of said Court. His office was responsible for the summoning of all jurors. He added, "There haven't been very many colored persons summoned. I would say perhaps a dozen in all Colored persons have been summoned from Dec. 7, 1936, when I took office as Sheriff of Forsyth County up until the present time." He estimated five had served on grand juries.

A prominent local lawyer, Mr. John D. Slawter, with an active trial practice of some 31 years, testified that there had been colored jurors, but could not estimate their number. He thought there were more than 4 or 5 who had served on the grand jury and petit jury in the past 10 years. He could not state whether there had been as many as 10. Two other local residents testified that they had been about the courts frequently and saw few, if any, Colored persons on the juries over the past few years.

The Solicitor for the State admitted that no Negroes served on the Grand Jury in the year 1946.

James G. Hanes, Chairman since 1928 of the County Board of Commissioners, (which has the responsibility of drawing up the jury lists biennially), testified that he and the other Commissioners turned over the tax cards to the Register of Deeds, who prepared the jury lists. He disclaimed knowledge of the number of names put into the jury box and stated that he did not inquire about the number put in the jury box but left all of these matters up to Mr. Lentz, the Register of Deeds. He further testified that in his opinion the figure 8,834, out of a total of 40,000 taxpayers, did not represent an unreasonable and unusually low number of names to go into the jury box for the biennial period commencing in 1941, and that the figure 10,367 did not represent a low percentage of names to go into the jury box for the biennial period commencing in 1945. He disclaimed knowledge of the separate lists marked "Colored." He declared that he did not know what proportion the colored population in Forsyth County bore to the total population. He further testified that all he knew about it was that the names in the jury box contained the same proportion of colored to whites

as the tax lists did. He stated that never was there discussion of the color of a juror. No records were kept of the jurors rejected, but he added "not a great number of them were rejected." The percentage rejected for moral character and intelligence, he testified, was very, very small.

The Court overruled and denied defendant's Motion to Quash to which defendant duly excepted, and later made its Findings of Fact thereon, to which Findings of Fact the defendant duly excepted thereto.

The Motion to Quash, being an Interlocutory Motion, was heard and passed upon by Judge J. A. Rousseau, Presiding, and holding the Superior Court of Forsyth County, without the intervention of a jury, —no jury being required or necessary under North Carolina procedure and practice. At the time the Motion to Quash was called and heard no jury had been impaneled and no petit jurors had been called up, sworn, or examined, relative to serving on the case at bar.

Jury Statutes of North Carolina

Chapter 9, General Statutes of North Carolina, (1943) provides the framework for the selection of jurors.

Section 1 states;

"The Board of County Commissioners for the several counties at their regular meetings on the first Monday in June, in the year 1905, and every two years thereafter, shall cause their clerks to lay before them the tax returns of the preceding year for their county, from which they shall proceed to select the names of all such persons as have paid all the taxes assessed against them for the preceding year

and are of good moral character and of sufficient intelligence. A list of the names thus selected shall be made out by the Clerk of the Board of Commissioners and shall constitute the jury list, and shall be preserved as such."

Section 2 provides;

"The Commissioners at their regular meeting on the first Monday in July in the year 1905, and every two years thereafter, shall cause the names on their jury list to be copied on small scrolls of paper of equal size and put into a box procured for that purpose, which must have two divisions marked number one and number two, respectively, and two locks, the key of one to be kept by the sheriff of the county, the other by the chairman of the Board of Commissioners, and the box by the Clerk of the Board."

Section 3 states;

"At least 20 days before each regular or special term of the Superior Court, the Board of Commissioners of the County shall cause to be drawn from the jury box out of the partition marked No. 1, by a child not more than ten years of age, 36 scrolls except when the term of court is for the trial of civil cases exclusively, when they need not draw more than 24 scrolls. The persons whose names are inscribed on said scrolls shall serve as jurors at the term of the Superior Court to be held for the county ensuing such drawing, and for which they are drawn. The scrolls so drawn to make the jury shall be put into the partition marked No. 2. The said Commissioners shall at the same time and in the same manner draw the names of 18 persons who shall be summoned to appear and serve during the second week, and a like number for such succeeding week of the term of said

court, unless the judge thereof shall sooner discharge all jurors from further service. The said Commissioners may, at the same time and in the same manner, draw the names of 18 other persons, who shall serve as petit jurors for the week for which they are drawn and summoned. The trial jury which has served during each week shall be discharged by the judge at the close of said week, unless the said jury shall be then actually engaged in the trial of a case, and then they shall not be discharged until the trial is determined."

With respect to Forsyth County, Section 4 provides;

". . . . . the Board of County Commissioners is authorized and empowered to draw as jurors from the box, as provided in the preceding section, an additional number of jurors to those now provided by law. . . . At all criminal terms, regular and special, for the first week, 42 jurors shall be drawn and summoned."

Section 7 adds;

"If any of the persons drawn to serve as jurors are dead, removed out of the county, or otherwise disqualified to serve as jurors, the scrolls with the names of such persons must be destroyed, and in such cases other persons shall be drawn in their stead."

Section II deals with talesmen;

"That there may not be a defect of jurors, the sheriff shall by order of the court summon, from day to day, of the bystanders, other jurors, being freeholders, within the county where the court is held, or the judge may, in his discretion, at the beginning of the term direct the tales jurors to be

drawn from the jury box used in drawing the petit jury for the term, in the presence of the court; such tales jurors so drawn to be summoned by the sheriff and to serve on the petit jury, and on any day the court may discharge those who have served the preceding day. The judge may, upon his own motion, or upon the request of counsel for either plaintiff or defendant, instruct the sheriff to summons such jurors, outside of the courthouse. It is a disqualification and ground of challenge to any tales juror that such juror has acted in the same court as grand, petit or tales juror within two years next preceding such term of court."

Section 24 provides;

"The judges of the Superior Court, at the terms of their courts, except those terms which are for the trial of civil cases exclusively, and special terms for which no grand jury has been ordered, shall direct the names of all persons returned as jurors to be written on scrolls of paper and put into a box or hat and drawn out by a child under ten years of age; whereof the first 18 drawn shall be a grand jury for the court; and the residue shall serve as petit jurors for the court."

These provisions constitute the method of jury selection relevant to a consideration of the record in this case. It may be well to add at this point that the General Statutes of North Carolina (1943), Chapter 105.

Section 341 provides;

"There shall be levied by the Board of County Commissioners in each county a tax of $2.00 on each taxable poll or male person between the ages of 21 and 50 years . . . . ."

ERRORS RELIED UPON.

1. The Supreme Court of North Carolina erred in holding that the Board of County Commissioners of Forsyth County had not arbitrarily and systematically discriminated against Negro and White citizens in jury selection contrary to the 14th. Amendment of the Federal Constitution and laws thereunder.

2. The Supreme Court of North Carolina erred in finding that the Statutes of North Carolina permitting discrimination against White and Negro citizens in jury selection did not violate the Fourteenth Amendment of the Federal Constitution.

3. The Supreme Court of North Carolina erred in finding that the petitioner failed to invoke the proper procedure to challenge the validity and constitutionality of the practices used by the County and the Court in drawing and selecting the jury.

ARGUMENT.

I.

The Board of County Commissioners of Forsyth County arbitrarily and systematically discriminated against Negro and White citizens in jury selection contrary to the 14th. Amendment of the Federal Constitution and laws thereunder.

Whenever by any action of a State, whether through its Legislature, through its Courts, or through its Executive or Administrative offices, persons are excluded solely because of their race or color from serving as grand or petit jurors in criminal prosecutions, the equal protection of the laws is denied to the defendant, contrary to the 14th.

Amendment of the Constitution of the United States.

This is the settled principle established in a long line of decisions from the United States Supreme Court. Norris vs. Alabama, 294 U. S. 587; (1935); Neal vs. Delaware, 103 U. S. 370 (1881); Smith vs. Texas, 311 U. S. 128; Hill vs. U. S., 316 U. S. 400.

This right to a trial by jurors selected without discrimination is further buttressed by Federal Statute;

"No citizen possessing all other qualifications which are or may be prescribed by law shall be disqualified by service as a grand or petit juror in any court of the United States, or of any state, on account of race, color, or previous condition of servitude; and any officer or other person charged with any duty in the selection or summoning of jurors who shall exclude or fail to summon any citizens for the cause aforesaid shall, on conviction thereof, be deemed guilty of a misdemeanor, and be fined not more than $5,000."

18 Stat. 336 (1874), 8 U. S. C. sec. 44. See also right of removal to Federal Court, 16 Stat. 144 (1870), 28 U. S. C. sec. 74.

Not that the accused can demand, as a matter of right, a mixed jury or a pro rata proportion of Negro to White. "What an accused is entitled to demand under the Constitution of the United States, is that in organizing the grand jury as well as the impanelling of the petit jury, there shall be no exclusion of his race, and no discrimination against them, because of their race or color." Martin vs. Texas, 200 U. S. 316, (1906); Thomas vs. Texas, 212 U. S. 278, (1908).

In 245 U. S. 60, Buchanan vs. Warley, Justice Day, in an unanimous opinion of the court, in discussing

the history of the 14th. Amendment and the rights and benefits secured therein, said;

"While a principal purpose of the latter Amendment was to protect persons of color, the broad language used was deemed sufficient to protect all persons, white or black, against discriminatory legislation by the States. This is now the settled law." (p. 76.)

"What is this but declaring that the law in the States shall be the same for the black as for the white; that all persons, whether colored or white, shall stand equal before the laws of the States, and, in regard to the colored race, for whose protection the amendment was primarily designed, that no discrimination shall be made against them by law because of their color?"

"The 14th. Amendment makes no attempt to enumerate the rights it designed to protect. It speaks in general terms, and those are as comprehensive as possible. The language is prohibitory; but every prohibition implies the existence of rights and immunities, prominent among which is an immunity from inequality of legal protection, either for life, liberty, or property. Any State action that denies this immunity to a colored man is in conflict with the Constitution." (p. 77.)

The question, then, is of the application of these established principles to the facts disclosed by the record.

Did the Board of County Commissioners observe the law in their preparation of the jury lists? The record indicates a vigorous negative. There were 40,500 eligible taxpayers. Making maximum estimates, much higher than warranted by the record, there were 10% women, 5% non-residents, 7.5%

guardian accounts; assuming a figure of 7.5% as persons disqualified for morals and intelligence (although the record would indicate less, a total of disqualifications in the neighborhood of 30% can be approximated, making very generous allowances. Deducting a full 30% from the 40,500 eligible taxpayers, leaves 28,350 prospective jurors for the jury lists compiled in 1945. Yet only 10,622 found their way into the jury lists! The case of the missing 17,728 prospective jurors is a serious irregularity that can be charged against the Board of County Commissioners.

Furthermore, it should be observed from the Table that the total number on the jury list for the biennial period 1945-1947 was 332 less than that for the biennial period of 1935-1937 and in face of the fact that a period of 10 years had elapsed during which 10 year period of time the population of Forsyth County, which is highly industrialized and constitutes one of the State's most populous Counties, was growing by leaps and bounds as shown by the U. S. Census Tables. (For the year —77,267; for the year—1930—111,681; for the year 1940—126,475; and an estimate of the population for the year 1946 of 150,000 was made by the Winston-Salem Chamber of Commerce.

Confining the examination to the question of discriminated Negroes, if 4,000 were considered the number of paid-up Colored taxpayers, and 30% were removed as disqualified, then a balance of 2,800 should have appeared as eligible for jury service on the jury lists. On the other hand, if the 7,000 were used (including the 3,000 delinquents) then 4,900 would represent the Colored persons who should have been included in the jury list. If the 5,-

500 figure is utilized allowing for collection of about 50% of delinquent accounts, then 3,850 Negroes should have been listed for jury service.

But only 255 Colored taxpayers were placed on the 1945 jury list. On the basis of 7,000 eligible Negro jurors, then only 5% were placed on the jury list; on the basis of 2,800 eligible, less than 10% were listed; if 3,850 were considered eligible, only 7% were listed.

As to the White taxpayers, there were about 23,450 eligible for the jury list, of whom only 10,367 were actually placed thereon, thus omitting over 55% of their number.

To illustrate these figures more graphically, we insert at this point the following Table;

Table

Total number of taxpayers (Witness, Joyce)		43,000
Less firms, corporations, churches, partnerships, etc., listed		2,500
Leaving (net) total number of individuals listed as taxpayers		40,500
Which are made up of; (White)	32,500	
(White) Delinquents,	1,000	
(Colored)	4,000	
(Colored) Delinquents,	3,000	
	40,500	
Reduced by;		
Non-resident tax listers,	3% to 5%	
Women tax listers, (Witness, Joyce)	10%	
Guardians for minors tax listers, (Witness, Joyce)	5% to 10%	

Taxes uncollected, about (Witness Mickle)	1.28%	
Tax listers who are not of good moral character and who do not have sufficient intelligence (under GS 9-I) to qualify for jury service	3.72%	
	30.00%	12,150
Thus leaving (net) a total of individual male resident taxpayers of Forsyth County whose names under the General Statutes, are entitled to be placed in the jury box of said County,		28,350
ACTUALLY TODAY THERE ARE IN THE JURY BOX only,		10,622
THUS LEAVING A SHORTAGE (OR DISCREPANCY) OF NAMES NOT IN THE JURY BOX of		17,728
WHITE	33,500	
Deduct for women, non-residents, guardians, etc. (Above), (30%)	10,050	
	23,450	
Total number of White taxpayers whose names are now in the jury box (for 1945-1947) as		

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shown by "Stipulation of Counsel."	10,367
(Shortage)	13,083
Percent of White taxpayers whose names are in the jury box	44.28%
Percent of White taxpayers whose names were kept out of the jury box	55.72%
COLORED (NEGROES)	7,000
Deduct for women, non-residents, guardians, etc. (Above), (30%)	2,100
	4,900
Total number of Colored taxpayers whose names are now in the jury box (for 1945-1947), as shown by "Stipulation of Counsel."	255
(Shortage)	4,645
Percent of Colored taxpayers whose names are in the jury box,	5.48%
Percent of Colored taxpayers whose names were kept out of the jury box,	94.52%

The conclusion to be drawn from the above analysis is that 55% of the White prospective jurors were discriminated against and that from 90% to 95% of the Negroes were subjected to arbitrary discrimination and exclusion in the preparation of jury lists. Could a more flagrant case of discrimination be set forth?

Moreover, no one contradicted the existence of separate lists marked "Colored" for the biennial years 1941 and 1945. What was the purpose of such lists? On their face, they segregate on the basis of color a section of the eligibles from the remainder. What could have been the purpose of this segregation except to identify the Negroes as a group on the jury lists in order to limit and to exclude them from service on the juries? What legal justification for this exclusionary practice could there be? Certainly not qualifications of moral character or intelligence, which the Chairman of the Board of County Commissioners stated was responsible for a "very, very small" percentage of rejections. And, as shown above, there was an abundance of eligible jurors. There was no explanation in the evidence for these separate Negro lists.

The best proof of the results of the Board's practices in effectuating the exclusion of Negroes from juries is what actually occurred. From the lips of the Sheriff himself, who has held office continuously since 1936, it was recorded that no Negroes were summoned or served on the grand jury for the present term, which is the term embracing the trial of the case at bar, and that only one Negro, Jefferson H. Hairston, had been drawn and summoned for service, and was serving as a petit juror at the present term of said court. **His best estimate of the number of Colored people summoned for a period of last ten years was a dozen persons.** A local active trial lawyer, John D. Slawter, who had practiced for 31 years, could not state whether there had been as many as ten Colored jurors serving on grand and petit juries within the past ten years, and two other local citizens, Gene Pratt, and Christopher C.

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Kellum, testified that they had seen few, if any, on the petit juries.

A token compliance with the mandate of the 14th. Amendment, it is submitted, is equivalent to a studied and complete disregard of the meaning of equal protection of the law with respect to the selection of jurors. Hill vs. State of Texas, 316 U. S. 400.

The comment of the Supreme Court in analogous cases is illuminating. In Pierre vs. Louisiana, 306 U. S. 354 (1939), the court stated at p. 358;

> "Indictment by grand jury and trial by jury cease to harmonize with our traditional concepts of justice at the very moment particular groups, classes, or races—otherwise qualified to serve as jurors in a community—are excluded as such from jury service. The 14th. Amendment entrusts those who because of race are denied equal protection of the laws in a State first to the revisory power of the higher courts of the State, and ultimately to the review of this court."

The above case involved a motion to quash because of discrimination in the method of constituting the grand jury. Petitioner's witnesses testified that between 1896 and 1936 no Negroes had served on grand juries. A venire of 300 in 1936 contained names of three Negroes, one dead; one called for service in January 1937, was the only Negro called for jury service in memory of all witnesses including the Sheriff. About one-half the population of the parish was Negro.

The Court said that the fact that one-half the population was Negro demonstrated that there could have been no lack of colored residents over 21 years of age. . . . .

"There is no evidence on which even an inference can be based that any appreciable number of the otherwise qualified Negroes in the Parish were disqualified for selection because of bad character or criminal records. . . . The testimony introduced by petitioner's own motion to quash create a strong prima facie showing that Negroes had been systematically excluded because of race from the grand jury and the venire from which it was selected. Such an exclusion is a denial of equal protection of the laws contrary to the Federal Constitution—the supreme law of the land. . . . Principles which forbid discrimination in the selection of petit juries also cover the selection of grand juries. It is a right to which every colored man is entitled, that, in the selection of juries to pass upon his life, liberty, or property, there shall be no exclusion of his race, and no discrimination against them because of their color."

In Neal vs. Delaware, 103 U. S. 370 (1881), the Court sustained a motion to quash on the strength of an affidavit alone because (page 397):

" . . . . the fact (so generally known that the court felt obliged to take judicial notice of it) that no colored citizen had ever been summoned as a juror in the courts of the State—although its colored population exceeded 20,000 in 1870 and in 1880 exceeded 26,000, in a total population of less than 150,000—presented a prima facie case of denial, by the officers charged with the selection of grand and petit jurors, of that equality of protection which has been secured by the constitution and laws of the United States. It was, we think, un-

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der all the circumstances, a violent presumption which the State court indulged, that such uniform exclusion of that race from juries, during a period of many years, was solely because in the judgment of its officers, fairly exercised, the black race in Delaware were utterly disqualified, by want of intelligence, experience, or moral integrity, to sit on juries. The action of those officers in the premises is to be deemed the act of the State, and the refusal of the State court to redress the wrong by them committed was a denial of a right secured to the prisoner by the Constitution and laws of the United States."

In Norris vs. Alabama, 294 U. S. 587 (1934), in an opinion dealing with a motion to quash an indictment, it was said at page 593:

"The State Court rested its decision upon the ground that even if it were assumed that there was no name of a Negro on the Jury roll, it was not established that race or color caused the omission. The Court pointed out that the statute fixed a high standard of qualifications for jurors and that the Jury Commissioner was vested with a wide discretion. The Court adverted to the fact that more white citizens possessing age qualifications had been omitted from the Jury roll than the entire Negro population of the County, and regarded the testimony as being to the effect that the matter of race, color, politics, religion, or fraternal affiliations had not been discussed by the Commission and had not entered into their consideration and that no one had been excluded because of race or color . . . . and the Commissioner testified that in the selections for the Jury roll, no one was au-

tomatically and systematically excluded on account of race or color; that he 'did not inquire as to color, that was not discussed.' "

At Page 594, the Court added:

"But in appraising the action of the Commissioners, these statements cannot be divorced from other testimony. As we have seen, there was testimony, not overborne or discredited, that there were in fact Negroes in the County qualified for jury service. That testimony was direct and specific. After eliminating those persons as to whom there was some evidence of lack of qualifications, a considerable number of those remained. The fact that the testimony as to these persons, fully identified, was not challenged by evidence approximately direct, cannot be pushed aside. There is no ground for an assumption that the names of these Negroes were not on the preliminary list. The inference to be drawn from the testimony is that they were on that preliminary list, and were designated on that list as the names of Negroes, and that they were not placed on a Jury roll. There was thus presented a test of the practice of the Commissioners. Something more than mere general asseverations was required. Why were these names excluded from the jury? Was it because of the lack of statutory qualifications? Were the qualifications of Negroes actually and properly considered?"

"The testimony of the Commissioner leads to the conclusion that these or other Negroes were not excluded on account of age, or lack of esteem in the community for integrity and judgment, or

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because of disease or of any other qualification. The Commissioner's answer to specific inquiry upon this point was that Negroes were never discussed . . . . . We think that the evidence that for a generation or longer no Negro had been called for service on any jury in Jackson County, that there were Negroes qualified for jury service, that according to the practice of the jury commission their names would normally appear on the preliminary list of male citizens of the requisite age, but that no names of Negroes were placed on the jury roll, and the testimony with respect to the lack of appropriate causes of the disqualification of Negroes established the discrimination which the Constitution forbids. The motion to quash the indictment on that ground should have been granted."

Finally, the Supreme Court had to consider a motion to quash on an indictment and conviction for rape in the case of Smith vs. Texas, 311 U. S. 128 (1940).

In that case the Negroes of the county comprised 20% of the population and 10% of the poll tax payers. A minimum of 3,000 to 6,000 measured up to qualifications for jury service. From 1931 to 1938, five of 384 grand jurors were Negroes. Total number summoned for grand jury service was 512, of whom 18 were Negroes. Of the 18 summoned, 13 appeared as the last names on a 16-man jury list, the first 12 of whom were selected.

As a result of this numbering, only 5 ever served, whereas 339 of the 494 white men summoned actually served. It also appeared that of the 32 grand juries empaneled, only 5 had Negro members, while 27

had none, and that of the 5, the same individual served three times, so that only three individual Negroes served at all. The tabulation of colored citizens serving on grand juries was as follows; 1931—1; 1932—2; 1933—1; 1934—1; 1935—none; 1936—1; 1937—none; 1938—none.

The Court, passing on these facts stated at page 130:

> "It is part of the established tradition in the use of juries as instruments of public justice that the jury be a body truly representative of the community. For race discrimination to result in the exclusion from jury service of otherwise qualified groups not only violates our Constitution and the laws enacted thereunder (18 Stat. 336, 8 U. S. C., sec. 44), but is at war with our basic concepts of a democratic society and a representative government. We must consider this record in the light of these important principles. The fact that the written words of a states' laws hold out a promise that no such discrimination will be practiced is not enough. The 14th. Amendment requires equal protection to all must be given—not merely promised. . . . Chance and accident alone could hardly have brought about the listing for grand jury service of so few Negroes from among the thousands shown by the undisputed evidence to possess the legal qualifications for jury service."

The Court stated the denial by two jury commissioners that they intentionally, arbitrarily or systematically discriminated against Negro jurors was not sufficient.

> "But even if their testimony were given the greatest possible effect, and their situation con-

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sidered typical of that of the 94 commissioners who did not testify, we would still feel compelled to investigate the decision below. What the 14th. Amendment prohibits is racial discrimination in the selection of grand juries. Where jury commissioners limit those from whom grand juries are selected to their own personal acquaintance, discrimination can arise from commissioners who know no Negroes as well as from commissioners who know but eliminate them. *If there has been discrimination, whether accomplished ingenuously or* ingeniously, the conviction cannot stand" (Italics supplied).

What more appropriate comment could be made with respect to the case at bar?

The Supreme Court of North Carolina, in its opinion in 227 N. C. 552, refers to the case of State vs. Walls, 211 N. C. 487, appeal dismissed, 302 U. S. 635, as being analogous to the cases at bar. It is respectfully submitted that an examination of the last cited case reveals no identity with the facts of the present cases. In the Walls case, there was no positive evidence as to the exclusion of Negroes in the record, aside from proof that in the preparation of the jury lists there was the use of different colored inks for white and Negro citizens.

There is consequently no resemblance between the unchallenged proof of discrimination by the Board of County Commissioners and the Superior Court of Forsyth County and the failure to establish discrimination in the Walls case.

The case at bar is not at all similar to, and may be distinguished from and in many respects differentiated from, the cases of Fay vs. New York and Bove

vs. New York, 91 U. S. (LE) 1517, decided June 23, 1947.

First, in those cases the Negro or race question was not raised or brought in question, and therefore 18 Stat. 336 (1874) 18 U. S. C. Sec. 44, (enacted under the power granted Congress under the provisions of Sec. 5 of the 14th. Amendment of the Federal Constitution) could not be availed of. In the case at bar the petitioner is a Negro and the Negro or Race question is raised and brought in question and said Statute, 18 U. S. C. Sec. 44, is relied upon and set up.

Second, in those cases the alleged discrimination was not shown to exist for any considerable period of time past, while in the case at bar the discrimination is alleged and proven to have existed for a long period of time, namely, 10 years.

Third, in those cases the court said: "The defendants raise no question as to the constitutionality of the general statutes of New York which prescribe the qualifications, disqualifications and exemptions for ordinary jury service. Neither is any question raised as to the administraton of these general statutes by which the population of New York County, numbering some 1,800,000 is sifted to produce a general jury panel of about 60,000 unless it be there is discrimination against women" (page 1521). In the case at bar the constitutionality of the General Statutes of North Carolina, with their qualifications, disqualifications and exemptions, as well as the administration of these General Statutes, is raised and set up.

II

The Statutes of North Carolina permitting discrimination against White and Negro citizens in jury

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selection violate the 14th. Amendment of the Federal Constitution.

It is submitted that Chapter 9 of the North Carolina General Statutes creates unconstitutional limitations on the selection for grand and petit jurors, as well as talesmen. For example, Section I restricts the jury list to tax payers, who are either property owners or polltax payers (Chapter 105, Section 341). Furthermore, polltax payers include only males between the ages of 21 and 50. Thus, if a male over 50 possesses no property he is excluded from jury service by the terms of the statute. Then Section II of Chapter 9 requires that talesmen be freeholders.

As a consequence, the payment of taxes and the possession of property are made prerequisites for jury service, and an entire class of propertyless males over 50 years of age are precluded from jury service. These disqualifications have no reasonable relationship to competency for jury service, but exclude a substantial economic segment of the community from involvement in the trial of causes that may well effect their status. Viewed from the aspect of the accused, defendants from the lowest economic levels of society are confronted with juries that are unrepresentative of the class of persons from which they emerge.

The cases at bar represent a vivid example to illustrate how humble toilers may suffer prejudice when tried by jurors whose qualifications include the payment of taxes and the ownership of property. These lowly laundry workers were involved in a labor dispute that can arouse the emotions of an entire community to a fever pitch and divide its sentiment along strictly economic lines. Can it be said

that these petitioners could secure a fair trial from a jury that excluded the propertyless?

The Supreme Court of the United States reasoned along similar lines in the case of Thiel vs. Southern Pacific Co., 665 Ct. 984, at pages 985 and 986 of the opinion:

"The American tradition of trial by jury, considered in connection with either criminal or civil proceedings, necessarily contemplates an impartial jury drawn from a cross-section of the community. . . . . This does not mean, of course, that every jury must contain representatives of all economic, social, religious, racial, political and geographical groups of the community, frequently such complete representation would be impossible. But it does mean that prospective jurors shall be selected by court officials without systematic and intentional exclusion of any of these groups. Recognition must be given to the fact that those eligible for jury service are to be found in every stratum of society. Jury competence is an individual rather than a group or class matter. To disregard it is to open the door to class distinctions and discriminations which are abhorrent to the democratic ideals of trial by jury. . . . . Wage earners, including those who are paid by the day, constitute a very substantial portion of the community, a portion that cannot be intentionally and systematically excluded in whole or in part without doing violence to the democratic nature of the jury system. Were we to sanction an exclusion of this nature, we would encourage whatever desires those responsible for the selection of jury panels may have to discriminate against persons of low economic and social status. We could breathe life into any latent tendencies to

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establish the jury as the instrument of the economically and socially privileged. That we refuse to do."

See also Glasser vs. U. S., 315 U. S. 68, 85, 62 S. Ct. 457.

Chapter 9, General Statutes of North Carolina, Section II, provides that to avoid a defect in the number of available petit jurors the Court may direct the sheriff to summon from the community talesmen who must be freeholders, however; or the Court may have the names of such talesmen chosen from the regular jury box.

Finally, it is submitted that the statute is unconstitutional since it fixes as a prerequisite to eligibility for jury service as talesmen the ownership of real property. This is discriminatory against those who do not own real estate. The same arguments and reasons apply here as were made in connection with the statutes requiring payment of taxes as a precondition for jury service.

In the Thiel case (Thiel vs. Southern Pacific Co., supra) a passenger on a railroad sued in the Federal Court for personal injuries suffered by him on a train. He moved to strike the jury panel on the ground that there was a deliberate and intentional exclusion from the jury list of persons who worked for a daily wage. Testimony was taken establishing such a practice, but the particular jury which heard the case did have at least 5 members of the laboring class on it. The high court reversed the District Court, which had denied the motion to strike the jury panel. The Court stated:

"It is likewise immaterial that the jury which actually decided the factual issue in the case was found to contain at least five members of the labor-

ing class. The evil lies in the admitted wholesale exclusion of a large class of wage earners in disregard of the high standards of jury selection. To reassert those standards, to guard against the subtle undermining of the jury system, requires a new trial by a jury drawn from a panel properly and fairly chosen."

A jury must be fairly and impartially drawn from the community, without discrimination. The 14th. Amendment operates as a prohibition against the policy or practice of excluding any particular group or class. A jury should be fairly and impartially made up out of the whole fabric of the community. (See Smith vs. State, 45 Tex. Cr. 405, 77 S. W. 453 (1903); 19 Boston Un. Law Rev., 413, 430). Quotas for particular races do not make properly constituted jury lists or panels; it is the bona fide absence of discrimination in drawing up these jury panels in the first instance which makes a fair and impartial jury.

The petitioners are Negroes. The physical difference of race raises no problem of law on the motion to quash the jury panel. The action of the Board of County Commissioners in excluding large numbers of Negro eligible persons from the jury lists not only worked prejudice to the defendant but the action also of said Board in excluding large numbers of White eligible persons from the jury lists worked prejudice to the defendant. It is submitted that the unconstitutional method of selecting the jury by systematically excluding Colored persons, and White persons as well, invalidated the jury panel and made it incompetent as to the defendant.

If the motion to quash the jury panel because of the alleged illegal and unconstitutional manner of its selection is on firm ground, it then follows that the

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proceedings from there on were superfluous and meaningless and no jury, afterwards impaneled after the motion to quash had been overruled and denied, in law was eligible to try the case.

In Thiel vs. Southern Pacific Co., supra, the Court stated that "it becomes unnecessary to determine whether the petitioner was in any way prejudiced by the wrongful exclusion or whether he was one of the excluded class." It was sufficient, the court said, that "we cannot sanction the method by which the jury panel was formed in this case." (66 S. Ct. at page 988, and cases there cited.)

Likewise, in Glasser vs. U. S., supra, the Supreme Court stated that had there been sufficient proof of deliberate selection of juries from a particular private organization of women, the panel would have invalidated because of the exclusion of all women not members of the organization. This apparently would have been true because a fair and impartial jury would have been lacking, despite the fact that the accused was male.

In Ballard vs. U. S. 67 S. Ct. 261 (1946), the indictment was dismissed as to the male and female defendants because of the purposeful and systematic exclusion of women from the panel from which the grand jury was drawn.

The logical basis of these decisions is that the failure to draw a jury impartially and fairly from the community, without the exclusion of any group or class, is deemed prejudicial, irrespective of the particular status of the defendant.

III

The Petitioner invoked the proper procedure to challenge the validity and constitutionality of the

practices used by the County and the Court in drawing and selecting the jury by filing their motion to quash prior to the trial of the cause in the Superior Court of Forsyth County.

The Petitioner's motion properly presented a challenge to the array, raising the question of the invalidity of the entire jury panel because of exclusionary practices and statutory defects. Numerous cases coming to this Court from common law jurisdictions have used the same procedure. Hill vs. Texas, supra; Norris vs. Alabama, supra; Neal vs. Delaware, supra. The State of North Carolina is a common law jurisdiction (General Statutes of North Carolina, Chapter 4, Sec. 1). Furthermore in State vs. Kirksey, 227 N. C. 445, at page 447, the Supreme Court of North Carolina stated;

"If defendant had wished to take advantage of his objection to the petit jury and special venire, he should have done so by challenging the array, State vs. Douglass, 63 N. C. 500, and before entering upon the trial of the case."

Likewise, by implication the Supreme Court of North Carolina in the cases of State vs. Peoples, 131 N. C. 784, and State vs. Daniels, 134 N. C. 641, gave its approval to the use of the motion to quash in connection with petit juries as well as grand juries.

It is therefore difficult for the petitioner to follow the reasoning of the Supreme Court of North Carolina in its opinion below where the Court apparently confused a challenge to the array with a challenge to the polls.

The reservation of the exceptions to the rulings on the motion and to the Court's findings thereon, with respect to the regular panel, conclusively estab-

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lishes that the Petitioner's objections were taken in a proper form and at the proper time.

Nothing done or omitted to be done by the Petitioner in any way amounted to consent to the court's actions, or waiver or abandonment of petitioner's constitutional rights.

It is significant that neither the Superior Court of Forsyth County, nor the State on appeal in the Supreme Court of North Carolina, made any reference to any possible procedural deficiencies in presenting the questions clearly to the Supreme Court of North Carolina.

The Supreme Court of North Carolina did rule on the Federal questions presented to it, even though it made some comment about Petitioner's failure to exercise a remaining peremptory challenge and the alleged contention of Petitioner with the jury later selected and drawn after the motion to quash had been heard and overruled, and petitioner had duly excepted thereto. The Petitioner is unable to comprehend the precise meaning of the Supreme Court of North Carolina in its discussion of the procedural question since the law of North Carolina was carefully followed in presenting the questions, and exceptions were duly noted, and none of petitioner's rights were waived. Petitioner is at a loss to understand what more, if anything, could have been done by them to raise the questions presented to this court, and to preserve their rights in the premises.

In any event, the Petitioner submits that considerations of insubstantive technical procedure should not preclude this Court from reviewing serious questions affecting basic and fundamental constitutional rights. Hormel vs. Helvering, 312 U. S. 552.

CONCLUSION.

In the light of the flagrant discriminatory practices outlined in the Petitioner's brief, it is most respectfully urged that no more deserving or appealing cause for review by this Court of violation of the 14th. Amendment could be presented. Because of the inability to secure a trial by a fair and impartial jury, devoid of discriminatory imperfections, an humble Negro worker will be subjected to harsh and excessive punishment. And beyond the confines of this case, the public officials of Forsyth County will be encouraged to continue their practices of discrimination, which make it impossible for the poor and the lowly of Forsyth County to secure a trial by a jury constitutionally composed of a cross-section of the community. This Court should not permit any superficial barriers of technical procedure or vocal denials of discrimination, however cleverly and adroitly planned, to obscure a concealed deprivation of fundamental constitutional rights and prevent their elimination by the mandates of this Court. As stated by this Court in Smith vs. Texas, supra, page 131, "If there has been discrimination, whether accomplished ingenuously or ingeniously, the conviction cannot stand."

It is respectfully submitted that these cases call for exercise by this Court of its jurisdiction under Section 237 (b) of the Judicial Code; and that to such end writs of certiorari should issue to the Supreme Court of North Carolina.

WILLIAM R. DALTON,

NATHAN WITT,

Attorneys for Petitioner.

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ARGUMENT:

I—The Supreme Court of North Carolina erred in denying petitioners, all Negroes, the equal protection and due process of law guaranteed by the Fourteenth Amendment of the Constitution of the United States, and laws thereunder, by affirming their conviction upon warrants tried by a petit jury composed exclusively of white persons, from which juries, both grand and petit, an overwhelming majority of the qualified Negroes namely from 90 to 95% have for over a period of 10 years been arbitrarily, designfully and systematically discriminated against and excluded from jury selection service solely on account of race or color, by the Board of Commissioners of Forsyth County, North Carolina 5

A. Petitioners were arrested and convicted under warrants sworn out in the Municipal Court of Winston-Salem, N. C. and from the judgments there imposed in Oct.-Nov. 1946, appeals were taken to the Superior Court of Forsyth County, where they were tried de novo upon the original warrants before a petit jury, with Judge J. A. Rousseau presiding. Upon the call of the cases for trial petitioners immediately filed Motion to Quash, etc. (R. p. 4) alleging that at the time of trial, and at the then present term of court, and for a long period of time, viz, 10 years, and longer, immediately prior thereto, Negroes have been arbitrarily, designfully and systematically discriminated against and excluded from jury service in Forsyth County (both grand and petit) solely because of race or color, in violation of the due process and equal protection clauses of the 14th Amendment to the Constitution of the United States 6

I. The record in these five (5) cases clearly and unmistakably establish the arbitrary, designful, and systematic discrimination and exclusion of qualified Negroes from jury service in Forsyth County, North Carolina, solely on account of and because of race and color 6

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III. The Supreme Court of North Carolina erred in holding and decreeing that the petitioners, by filing their Motion to Quash prior to the swearing and impanelling of the jury to try the issues in the Superior Court of Forsyth County, did not invoke the proper procedure in challenging the validity and constitutionality of the practices used by the County and the State Courts in drawing up and selecting the petit juries...7

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In the Supreme Court of the United States

OCTOBER TERM, 1947

No. 292 JOHN HENRY BRUNSON, *Petitioner,*
vs.
STATE OF NORTH CAROLINA,
Respondent.

No. 293 ESSIE KING, *Petitioner,*
vs.
STATE OF NORTH CAROLINA,
Respondent.

No. 294 MARTHA JONES, *Petitioner,*
vs.
STATE OF NORTH CAROLINA,
Respondent.

No. 295 LOUISE JAMES (Alias Moore),
and EVELYN CHILDS, *Petitioners,*
vs.
STATE OF NORTH CAROLINA,
Respondent.

No. 296 LIDA MAE WATKINS,
CELIA ANN PURCELL,
JAMES EDWARD STURDIVANT, and
LOUVENIA WALLACE, *Petitioners,*
vs.
STATE OF NORTH CAROLINA,
Respondent.

On Writ of Certiorari to the Supreme Court of the State of North Carolina

BRIEF FOR PETITIONERS

OPINIONS OF THE COURT BELOW

The per curiam opinions of the Supreme Court of North Carolina in all of these five (5) cases have been

reported officially, as follows: State vs. John Henry Brunson, 227 N. C. 558; State vs. Essie King, 227 N. C. 559; State vs. Martha Jones, 227 N. C. 561; State vs. Louise James (Alias Moore) and Evelyn Childs, 227 N. C. 558; State vs. Lida Mae Watkins, Celia Ann Purcell, James Edward Sturdivant, and Louvenia Wallace, 227 N. C. 560.

The opinion of the Supreme Court of North Carolina in State vs. Koritz Etal. is also reported officially in 227 N. C. 552 and this case is decisive of and becomes the opinion of the Supreme Court of North Carolina in each and all of these five (5) cases of petitioners.

JURISDICTION

The jurisdiction of this Court is involved and conferred under Section 237 (b) of the Judicial Code (U. S. Code, Title 28, Sec. 344 (b). The Supreme Court of North Carolina entered judgments in all of these five cases on June 5, 1947, and Petitions for Writs of Certiorari were filed in all of these five cases on Aug. 23, 1947 and they were granted on Dec. 15, 1947.

STATEMENT OF CASE

By Stipulation filed in this Court on Dec. 20, 1947, the parties hereto have agreed that since all of these five (5) cases have identically the same Motions to Quash, with evidence offered thereon, and the same Findings of Fact, Exceptions taken, and Assignments of Error entered, with the same questions of law raised and presented, that one record only, namely that in the *Brunson Case* No. 292, shall be printed and that this record may be used and considered by the Court in hearing and deciding all five cases. It was further stipulated that all five of

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these cases may be treated, considered, and briefed in one brief.

From the heat engendered by picket line controversies in a laundry workers strike and labor dispute in Winston-Salem, North Carolina, arose the arrest of all of the petitioners (Negroes) in these five (5) cases, in Oct.-Nov. 1946 under warrants sworn out in the Municipal Court of Winston-Salem and charging the following crimes;

(1) John Henry Brunson, assault on Christine Davis, a female,

(2) Essie King, disturbing the peace and disorderly conduct,

(3) Martha Jones, disturbing the peace and disorderly conduct,

(4) Louise James, (Alias Moore), malicious injury to real property,

(5) Evelyn Childs, malicious injury to real property,

(6) Lida Mae Watkins, four warrants;

- (A) Assault with deadly weapon, stick, on Ethel Crews,
- (B) Assault with a deadly weapon, stick on G. W. Lancaster,
- (C) Resisting officers while in the discharge of their duties,
- (D) Assault with a deadly weapon, stick, on R. F. Holcomb.

(7) Celia Ann Purcell, assault with a deadly weapon, stick, on Estelle Britt,

(8) James Edward Sturdivant, assault on Estelle Britt, a female,

(9) Louvenia Wallace, assault on Estelle Britt.

All of the petitioners were adjudged guilty in the Municipal Court of the offenses charged (no jury being provided for in the creation and set-up of said Court) and from the road and jail sentences imposed all appealed to the November Term 1946 of the Superior Court of Forsyth County where and when, upon the call of these five (5) cases for trial, de novo, (and before any petit jurors had been called up, sworn, or examined, relative to serving on these cases), each and all petitioners immediately filed their Motion to Quash the warrant and to discharge the petit jury panel on the grounds that the Board of County Commissioners of Forsyth County had arbitrarily, designfully, and systematically discriminated against and excluded Negroes from the grand and petit juries in said County for the past ten years and longer, and that the General Statutes of North Carolina requiring, as prerequisite qualifications for jury service, that all persons shall be tax-listers and tax-payers or freeholders, violate and run counter to the Fourteenth Amendment of the Constitution of the United States. His Honor J. A. Rousseau, Judge Presiding, after hearing evidence thereon overruled all of petitioner's Motions to Quash (R. p 4) and made his Findings of Fact (R. p. 31), to which denial of Motion to Quash, and the Findings of Fact, petitioners duly excepted thereto. The Court then ordered the trials proceeded with on their merits, evidence was offered by the State, and verdicts of guilty, as charged in the warrants, were rendered by the petit jury against all of the petitioners. From the Judgement entered against John Henry Brunson (R. p 32) sentencing him to 15 months on the roads, and from the denial of motion for a new trial on the grounds of error committed during the progress of the trial, (R. p 32) he duly excepted and gave notice of appeal to the State Supreme Court in open Court. Judgments were also entered

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against each and all of the petitioners in the other four cases, as follows; Essie King, 30 days in County jail; Martha Jones, 30 days in County jail; Louise James (Alias Moore), 6 months in County jail; Evelyn Childs, 6 months in County jail; Lida Mae Watkins, 51 months in County jail; Celia Ann Purcell, 12 months in County jail; James Edward Sturdivant, 12 months on the roads; and Louvenia Wallace, 30 days in County jail. From the Judgments entered against the petitioners in these other four cases, as well as from the denial of motion for a new trial on the grounds of error committed during the progress of the trial, all petitioners duly excepted and likewise gave notice of appeal to the State Supreme Court, in open court. Upon appeal, the Supreme Court of North Carolina, affirmed the judgments.

ERRORS RELIED UPON

I

The Supreme Court of North Carolina erred in denying petitioners, all Negroes, the equal protection and due process of law guaranteed by the Fourteenth Amendment of the Constitution of the United States, and laws thereunder, by affirming their conviction upon warrants tried by a petit jury composed exclusively of white persons, from which juries, both grand and petit, an overwhelming majority of the qualified Negroes, namely from 90% to 95%, have for over a period of 10 years been arbitrarily, designfully and systematically discriminated against and excluded from jury selection service solely on account of race or color, by the Board of Commissioners of Forsyth County, North Carolina.

A. PETITIONERS WERE ARRESTED AND CONVICTED UNDER WARRANTS SWORN OUT IN THE MUNICIPAL COURT OF WINSTON-SALEM, N. C., AND FROM THE JUDGMENTS THERE IMPOSED IN OCT.-NOV. 1946, APPEALS WERE TAKEN TO THE SUPERIOR COURT OF FORSYTH COUNTY, WHERE THEY WERE TRIED DE NOVO UPON THE ORIGINAL WARRANTS BEFORE A PETIT JURY, WITH JUDGE J. A. ROUSSEAU PRESIDING. UPON THE CALL OF THE CASES FOR TRIAL PETITIONERS IMMEDIATELY FILED MOTION TO QUASH, ETC. (R. p 4) ALLEGING THAT AT THE TIME OF TRIAL, AND AT THE THEN PRESENT TERM OF COURT, AND FOR A LONG PERIOD OF TIME, VIZ, 10 YEARS AND LONGER, IMMEDIATELY PRIOR THERETO, NEGROES HAVE BEEN ARBITRARILY DESIGNFULLY, AND SYSTEMATICALLY DISCRIMINATED AGAINST AND EXCLUDED FROM JURY SERVICE IN FORSYTH COUNTY (BOTH GRAND AND PETIT) SOLELY BECAUSE OF RACE OR COLOR, IN VIOLATION OF THE DUE PROCESS AND EQUAL PROTECTION CLAUSES OF THE FOURTEENTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES.

(1) The record in these five (5) cases clearly and unmistakably establish the arbitrary, designful, and systematic discrimination and exclusion of qualified Negroes from jury service in Forsyth County, North Carolina, solely on account of and because of race and color.

II

The Supreme Court of North Carolina erred in not holding and decreeing (as alleged in the Motion to Quash, R. at p 7) that the General Statutes of North Carolina requiring as prerequisite qualifications for jury service that all persons shall be tax-listers and tax-payers or freeholders, violate the Fourteenth Amendment of the Constitution of the United States,

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and that the conviction of petitioners upon warrants tried by a petit jury in Forsyth County so made up, selected, and composed of tax-listers and tax-payers exclusively, is void, being in violation of the Fourteenth Amendment.

III

The Supreme Court of North Carolina erred in holding and decreeing that the petitioners, by filing their Motion to Quash prior to the swearing and impanelling of the jury to try the issues in the Superior Court of Forsyth County, did not invoke the proper procedure in challenging the validity and constitutionality of the practices used by the County and the State Courts in drawing up and selecting the petit juries.

ARGUMENT

I

The Supreme Court of North Carolina erred in denying petitioners, all Negroes, the equal protection and due process of law guaranteed by the Fourteenth Amendment of the Constitution of the United States, and laws thereunder, by affirming their conviction upon warrants tried by a petit jury composed exclusively of white persons, from which juries, both grand and petit, an overwhelming majority of the qualified Negroes, namely from 90% to 95%, have for a long period of years been arbitrarily, designfully and systematically discriminated against and excluded from jury selection service solely on account of race or color, by the Board of Commissioners of Forsyth County, North Carolina.

Whenever by any action of a State, whether through its Legislature, through its Courts, or through its Execu-

tive or Administrative offices, persons of a particular color or race are excluded solely because of their race or color from serving as grand or petit jurors in criminal prosecutions of persons of that race the equal protection of the laws is denied to the defendant and he is deprived of due process of law contrary to the Fourteenth Amendment of the Constitution of the United States. This is the settled principle established in a long line of decisions of the United States Supreme Court: Neal vs. Delaware, 103 U. S. 370; Smith vs. Texas, 311 U. S. 128; Hill vs. U. S. 316 U. S. 400. This principle applies whether the action is by virtue of a Statute, Bush vs. Kentucky 107 U. S. 110, 122, Strauder vs. West Virginia, 100 U. S. 303, 309, or by the action of Administrative officers, Rogers vs. Alabama, 192 U. S. 226, 229; Carter vs. Texas, 177 U. S. 442, or whether the exclusion is from service on petit juries, Norris vs. Alabama, 294 U. S. 587, Strauder, vs. West Virginia, 100 U. S. 303, or grand juries, Carter vs. Texas, 177 U. S. 442, 444.

The Supreme Court of North Carolina, while admitting that this principle is well settled, refused to apply it to the facts of these five (5) cases, and by reason of such failure denied petitioners their constitutional rights.

This right to a trial by jurors selected without discrimination is further buttressed and fortified by Federal Statute; as follows:

"No citizen possessing all other qualifications which are or may be prescribed by law shall be disqualified by service as a grand or petit juror in any court of the United States, or of any State, on account of race, color, or previous condition of servitude; and any officer or other person charged with any duty in the selection or summoning of jurors who shall exclude or fail to

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summon any citizen for the cause aforesaid shall, on conviction thereof, be deemed guilty of a misdemeanor, and be fined not more than $5,000."

18 Stat. 336 (1874), 8 U. S. C. sec. 44. See also right of removal to Federal Court, 16 Stat. 144 (1870), 28 U. S. C. sec. 74.

A. PETITIONERS WERE ARRESTED AND CONVICTED UNDER WARRANTS SWORN OUT IN THE MUNICIPAL COURT OF WINSTON-SALEM, N. C. AND FROM THE JUDGMENTS THERE IMPOSED IN OCT.-NOV. 1946, APPEALS WERE TAKEN TO THE SUPERIOR COURT OF FORSYTH COUNTY, WHERE THEY WERE TRIED DE NOVO UPON THE ORIGINAL WARRANTS, BEFORE A PETIT JURY, WITH JUDGE J. A. ROUSSEAU PRESIDING. UPON THE CALL OF THE CASES FOR TRIAL PETITIONERS IMMEDIATELY FILED MOTION TO QUASH, ETC. (R. p 4) ALLEGING THAT AT THE TIME OF TRIAL, AND AT THE THEN PRESENT TERM OF COURT, AND FOR A LONG PERIOD OF TIME, VIZ. 10 YEARS, AND LONGER, IMMEDIATELY PRIOR THERETO, NEGROES HAVE BEEN ARBITRARILY, DESIGNFULLY AND SYSTEMATICALLY DISCRIMINATED AGAINST AND EXCLUDED FROM JURY SERVICE IN FORSYTH COUNTY (BOTH GRAND AND PETIT) SOLELY BECAUSE OF RACE OR COLOR, IN VIOLATION OF THE DUE PROCESS AND EQUAL PROTECTION CLAUSES OF THE 14th AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES.

(1) The record in these five (5) cases clearly and unmistakably established the arbitrary, designful, and systematic discrimination and exclusion of qualified Negroes from jury service in Forsyth County, North Carolina, solely on account of and because of race and color.

PROOF OF DISCRIMINATION—(Evidence)

The law of the State of North Carolina, (Chap. 9, Sec. 1, General Statutes of N. C., 1943, copied in Appendix to this Brief, page 47) requires that the jury lists from which the jurors, both grand and petit, are chosen shall be made up every two (2) years by the Board of County Commissioners of each county from the tax returns of the preceding year for their County, from which they shall proceed to select the names of all such persons as have paid all the taxes assessed against them for the preceding year and are of good moral character and of sufficient intelligence, and that a list of the names thus selected shall be made out by the Clerk of the Board of Commissioners and shall constitute the jury list, and shall be preserved as such.

Did the Board of County Commissioners of Forsyth County observe the law in their preparation of the jury lists? The record in these five (5) cases indicates a vigorous negative.

Virgil W. Joyce, who is the County Tax Supervisor for Forsyth County, and has been since 1938, and whose duties consist of listing, assessing, and billing in connection with tax assessment in Forsyth County, and through whose office all persons, white and colored, who own property in the County, are required to list their property, testified (R. at p 11) that the records of his office, for the current year, 1946, for Forsyth County, show that there are approximately 43,000 tax payers of whom approximately 2500 represent firms, corporations, churches, organizations, etc. and that 32,500 of these are White and 4,000 Colored. He referred to 3,000 additional colored garnishees for poll taxes and an additional 1,000 white persons delinquent in poll taxes only.

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He further testified, when recalled, (R. p 19) that he estimated that 10% of the tax listers of Forsyth County are women; 3% to 5%, non-residents, and 5% to 10% as guardians and guardian accounts.

Walter A. Mickle, the County Tax Collector for Forsyth County, testified (R. at page 12) that 97% of the total taxes levied were collected for the year 1945, including the taxes levied on the 3,000 Colored delinquents and the 1,000 White delinquents, and that all of the taxes levied that were not collected for 1945, was about 1.28%.

Ernie G. Shore, Sheriff of Forsyth County who has been Sheriff of Forsyth County since 1936, testified (R. at p 16);

> "At this present term of the Superior Court of Forsyth County, there were no colored people summoned, there were none drawn or summoned for service on either the petit or Grand jury."

He further testified (R. at p 16);

> "There haven't been very many Colored persons summoned. I would say perhaps a dozen in all Colored persons have been summoned from Dec. 7, 1936, when I took office as Sheriff for Forsyth County, up until the present time". "The figure of a dozen persons is my best estimate."

The Record, at p. 30 shows that there is one Negro juror, viz; Jefferson H. Hairston, whose name was drawn out of the regular jury box and who was summoned by the Sheriff for service on the Petit Jury at this term and who is now serving.

Margaret Bell, an employee of the Winston-Salem Chamber of Commerce, and who has lived in Winston-

Salem all her life, testified (R. p 10) that the last United States Census for Forsyth County in 1940 showed a population of 126,475, of whom approximately 45% were Colored and 55% were White, and that an unofficial estimate of the 1946 population advanced by her was 150,000 persons, with 45% being Colored; that it is one of the functions of the Winston-Salem Chamber of Commerce to investigate matters of census and population and that she has been engaged in this particular work, and that the figures which she testified to have been taken from the records of said Chamber of Commerce.

John D. Slawter, an Attorney of Winston-Salem, with an active trial practice there of some 31 years, testified (R. p 22) that there have been colored jurors who have served on the Grand jury and the Petit jury but could not estimate their number. He thought there were more than 4 or 5 Colored who had served on the grand jury and the petit jury within the past 10 years. He could not state whether there had been as many as 10.

The Solicitor for the State admitted that no Negroes served on the Grand Jury in the year 1946. (R. p 23).

James G. Hanes (Witness for the State), who has been Chairman since 1928 of the County Board of Commissioners of Forsyth County (which has the responsibility of drawing up and selecting the jury lists biennially) testified (R. p 26-30) that he and the other Commissioners turned over the tax cards to the Register of Deeds, who prepared the jury lists. He disclaimed knowledge of the number of names put into the jury box and stated that he did not inquire about the number put in the jury box but left all of these matters up to Mr. Lentz, the

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Register of Deeds. That they kept no record as to those taxpayers who were rejected, and that he would say there are not a great number of them that are rejected. That the element or phase of fact, so far as moral character is concerned, was very, very small in percentage, and that as to intelligence, the percentage rejected would be extremely small, and that he didn't recall anyone, except when someone knows that a man is mentally incapacitated and that would be almost never. He disclaimed knowledge of the separate lists of 236 names for 1941 and 255 names for 1945, both marked "Colored".

From the foregoing evidence it will be seen that there were 40,500 eligible taxpayers in Forsyth County, and making maximum estimates, much higher than warranted by the record, there were 10% women, 5% non-residents, 7.5% guardian accounts, and assuming a figure of 7.5% as persons disqualified for morals and intelligence (although the record would indicate less), a total of disqualifications in the neighborhood of 30% can be approximated, making very generous allowances. Deducing a full 30% from the 40,500 eligible taxpayers, leaves 28,350 prospective jurors for the jury lists compiled in 1945. Yet only 10,622 found their way into the jury lists as agreed to by "Stipulations of Counsel" filed in the Superior Court, (R. p 8). The case of the missing 17,728 prospective jurors is a serious irregularity that can be charged against the Board of County Commissioners of Forsyth County.

Again, it should be observed from the "Stipulation of Counsel" (R. p 8) that the total number on the jury list for the biennial period of 1945-1947 was 332 less than that for the biennial period of 1935-1937 and in face of the fact that a period of 10 years had elapsed,

during which 10 year period of time the population of Forsyth County, which is highly industrialized and constitutes one of the State's wealthiest and most populous Counties, was growing by leaps and bounds as shown by the U. S. Census Tables. (For the year 1920—77,267; for the year 1930—111,681; for the year 1940—126,475); and an estimate of the population for the year 1946 of 150,000 as testified by Margaret Bell, witness, an employee of the Winston-Salem Chamber of Commerce.

Continuing the examination to the question of discriminated Negroes, if 4,000 were considered the number of paid-up Colored taxpayers, and 30% were removed as disqualified, then a balance of 2,800 should have appeared as eligible for jury service on the jury lists of Forsyth County. On the other hand, if the 7,000 were used (including the 3,000 delinquents) then 4,900 would represent the Colored persons who should have been included in the jury list. If the 5,500 figure is utilized, allowing for the collection of about 50% of delinquent accounts, then 3,850 Negroes should have been listed on the jury list for jury service.

But only 255 Colored taxpayers were placed on the 1945-1947 jury list. On the basis of 7,000 eligible Negro jurors, then only 5% were placed on the jury list; on the basis of 2,800 eligible, less than 10% were listed; if 3,850 were considered eligible, then only 7% were listed.

As to the White taxpayers, there were about 23,450 eligible for the jury list for 1945-1947, of whom only 10,367 were actually placed thereon, thus omitting and leaving off over 55% of their number.

As some of the figures or items above, that were testified to, are based on exact records, and as to others the testimony necessarily dealt in approximations, we have

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prepared for the convenience of the Court, the following table which, we believe, presents a fair and graphic summary of witnesses, Virgil W. Joyce and Walter A. Mickle's testimony: (R. p 11 and R. p 12).

Table

Total number of taxpayers (Witness, V. W. Joyce) (R. p 11) ----------		43,000
Less firms, corporations, churches, partnerships, etc., listed (Joyce R. p. 11)		2,500
Leaving (net) total number of individuals listed as taxpayers ----------		40,500
Which are made up of; (White) ------	32,500	
(White) Delinquents, ----------	1,000	
(Colored) ----------	4,000	
(Colored) Delinquents, ----------	3,000	
	40,500	
Reduced by;		
Non-resident tax listers, ---------3%	to 5%	
Women tax listers, (Witness, Joyce) (R. p 19) ----------10%		
Guardians for minors tax listers, (Witness, Joyce) (R. p 19) 5% to 10%		
Taxes uncollected about (Witness W. A. Mickle) (R. p 12) ----------	1.28%	
Tax listers who are not of good moral character and who do not have sufficient intelligence (under GS-9-1 to qualify for jury service ----------3.72%		
	30.00%	12,150

Thus leaving (net) a total of individual male resident taxpayers of Forsyth County whose names under the General Statutes, are entitled to be placed in the jury box of said County, ------		28,350
ACTUALLY TODAY THERE ARE IN THE JURY BOX only, ------		10,622
THUS LEAVING A SHORTAGE (OR DISCREPANCY) OF NAMES NOT IN THE JURY BOX of ----		17,728
WHITE ----------	33,500	
Deduct for women, non-residents, guardians, etc. (Above), (30%) -------	10,050	
	23,450	
Total number of White taxpayers whose names are now in the jury box (for 1945-1947) as shown by "Stipulation of Counsel" ----------	10,367	
(Shortage) ----------		13,083
Percent of White taxpayers whose names are in the jury box ----------	44.28%	
Percent of White taxpayers whose names were kept out of the jury box -------	55.72%	
COLORED (NEGROES) --------	7,000	
Deduct for women, non-residents, guardians, etc. (Above), (30%)--------	2,100	
	4,900	

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Total number of Colored taxpayers whose names are now in the jury box (for 1945-1947), as shown by "Stipulation of Counsel." ----------	255
(Shortage) ----------	4,645
Percent of Colored taxpayers whose names are in the jury box, ----------	5.48%
Percent of Colored taxpayers whose names were kept out of the jury box	94.52%

The conclusion to be drawn from the above analysis is that 55% of the White prospective jurors were discriminated against and that from 90% to 95% of the Negroes were subjected to arbitrary discrimination and exclusion in the preparation of jury lists. Could a more flagrant case of discrimination be set forth?

Moreover in "Stipulation of Counsel" (R. p 8) the existence of separate lists marked "Colored" for the biennial years 1941 and 1945 was admitted. What was the purpose of such lists? On their face, they segregate on the basis of color a section of the eligibles from the remainder. What could have been the purpose of this segregation except to identify the Negroes as a group on the jury lists in order to limit and to exclude them from service on the juries? What legal justification for this exclusionary practice could there be? Certainly not qualifications of moral character or intelligence, which the Chairman of the Board of County Commissioners stated was responsible for a "very, very small" percentage of rejections. And, as shown above, there was an abundance of eligible jurors. There was no explanation in the evidence for these separate Negro lists.

The best proof of the results of the Board's discriminatory practices in effectuating the exclusion of

Negroes from juries is what actually occurred. From the lips of the Sheriff himself, who has held office continuously since 1936, it was recorded that no Negroes were summoned or served on the grand jury for the present term, which is the term embracing the trial of the case at bar, and that only one Negro, Jefferson H. Hairston, had been drawn and summoned for service, and was serving as a petit juror at the present term of said court. His best estimate of the number of Colored people summoned for a period of last ten years was a dozen persons.

Local citizens, Gene Pratt, and Christopher C. Kallum, testified that they had seen few, if any, on the petit juries.

There was no evidence by the State to rebut the testimony offered on behalf of petitioners that the exclusion of Negroes from jury service in Forsyth County was all but complete.

The "Stipulation of Counsel" filed in the Superior Court, (R. p 8) was filed in all of petitioner's five (5) cases from which Stipulation it appears that a total of 51,916 names of prospective jurors were on the biennial jury lists of Forsyth County for the biennial period of 1935, 1937, 1939, 1941, 1943, and 1945. The Stipulation also reveals a separate list of Negroes marked "Colored" was drawn in 1941, and also again in 1945, as prospective jurors. It is uncontradicted that these separate lists marked "Colored" contained the names of all the Colored jurors whose names appeared in the box for the biennial jury lists of 1941 and 1945. For the year 1941 the names of only 236 Negroes appear in a total of 8,872 prospective jurors; for the biennial period of 1945-1947 (which includes the Nov. 1946 term of the court during which petitioners were tried)

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the names of only 255 Negroes appear in a total of 10,622 prospective jurors.

Now let us see how many jurors on the jury lists for Forsyth County were summoned by the Sheriff for jury service, both grand and petit, and who appeared for service in the Superior Court during the 10 period, from Oct. 1, 1936 up to and through the October 1946 Term of said Court, and what was the proportion of Negroes summoned to the Whites who were summoned, as evidencing further discrimination.

Wm. E. Church, Clerk of the Superior Court of Forsyth County, and who has served as said Clerk since Dec. 1, 1930, testified (R. p 19) that he had made a search of the records of his office for the purpose of showing the number of jurors who had been summoned and the number who had actually served. Based on his testimony, approximately 4,087 jurors in all had served during said ten (10) year period. Of this number a maximum of only 12 summoned was of the Negro race as testified to by Ernie G. Shore, Sheriff (R. p 16).

Because some of the figures given by Wm. E. Church, Clerk for part of the period were precise, while others were approximations, we have prepared for the convenience of the Court, the following table which projects his testimony graphically, and, we believe, fairly, as follows:

TABLE

From Oct. 12, 1936, through July 11, 1938 (1 3-4 yrs.)		
Total number summoned	1,012	
Excused from service	113	
Total serving		899

From July 12, 1938, through January 1, 1942 (3 1-2 yrs.)		
Total number summoned	2,024	
Excused from service,	226	
Total serving,		1,798
(Note: Witness Church testified that the number summoned and excused for this period was in the same ratio as in the preceding period.)		
From January 1, 1942, to (Spring) March 1, 1946 (4 1-6 yrs.)		
Total number summoned	1,204	
(Note: The witness testified that during the War period the number drawn and summoned was in ratio of about 50 per cent of the number in the preceding periods.)		
Number excused based on same ratio	134	
Total serving		1,070
From March 1, 1946, to (Oct. Term Court 1946) Oct. 7, 1946, (7 1-2 mos.)		
Total number summoned,	360	
(Note: The witness testified that the number summoned for this period was in the same ratio as in the 1936 to 1938 period.)		
Number excused	40	
Total serving		320

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GRAND TOTAL SERVING FROM Oct. 12, 1936 TO Oct. 19, 1946, (or a period of ten years) ----------		4,087
TOTAL COLORED SERVING ON JURY DURING 10 YEAR PERIOD	12	
TOTAL WHITE SERVING ON JURY DURING 10 YEAR PERIOD------	4,075	
		4,087

Of a total number of approximately 4087 jurors who served over the 10 year period extending from October 1936 to Oct. 1946 approximately 12 only were of the Negro race and the balance, 4,075, were of the White race. Could evidence of a more glaring discrimination be shown?

In the face of this overwhelming testimony of arbitrary and systematic exclusion and discrimination against Negroes, the Supreme Court of North Carolina in its opinion in 227 N. C. 552 State vs. Koritz, Etal, (at p. 556) held that the trial Judge's findings that there was no discrimination in the selection of the jury in regard to color, is supported by the evidence, and that no discrimination was intended or resulted from the manner in which the jury was prepared.

In 245, U. S. 60 Buchanan vs. Warley, Justice Day, in an unanimous opinion of the court, in discussing the history of the 14th. Amendment and the rights and benefits secured therein, said;

"While a principal purpose of the latter Amendment was to protect persons of color, the broad language used was deemed sufficient to protect all persons, white or black, against discriminatory legislation by the States. This is now the settled law. (p. 76).

"What is this but declaring that the law in the States shall be the same for the black as for the white; that all persons, whether colored or white, shall stand equal before the laws of the States, and, in regard to the colored race, for whose protection the amendment was primarily designed, that no discrimination shall be made against them by law because of their color?"

"The 14th. Amendment makes no attempt to enumerate the rights it designed to protect. It speaks in general terms, and those are as comprehensive as possible. The language is prohibitory; but every prohibition implies the existence of rights and immunities prominent among which is an immunity from inequality of legal protection, either for life, liberty, or property. Any State action that denies this immunity to a colored man is in conflict with the Constitution." (p. 77).

The accused cannot demand, as a matter of right, a mixed jury or a pro rata proportion of Negro to White.

"What an accused is entitled to demand under the Constitution of the United States, is that in organizing the grand jury as well as the impanelling of the petit jury, there shall be no exclusion of his race, and no discrimination against them because of their race or color". Martin vs. Texas 200 U. S. 316; Thomas vs. Texas, 212 U. S. 278.

A token compliance with the mandate of the 14th. Amendment, it is submitted, is equivalent to a studied and complete disregard of the meaning of equal protection of the law with respect to the selection of jurors. Hill vs. Texas, 316 U. S. 400.

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The comment of the Supreme Court in analogous cases is illuminating. In Pierre vs. Louisiana, 306 U. S. 354, the court stated at p. 358;

"Indictment by grand jury and trial by jury cease to harmonize with our traditional concepts of justice at the very moment particular groups, classes, or races—otherwise qualified to serve as jurors in a community—are excluded as such from jury service. The 14th Amendment entrusts those who because of race are denied equal protection of the laws in a State first to the revisory power of the higher courts of the State, and ultimately to the review of this court."

The above case involved a motion to quash because of discrimination in the method of constituting the grand jury. Petitioner's witnesses testified that between 1896 and 1936 no Negroes had served on grand juries. A venire of 300 in 1936 contained names of three Negroes, one dead; one called for service in January 1937, was the only Negro called for jury service in memory of all witnesses including the Sheriff. About one-half the population of the parish was Negro.

The Court said that the fact that one-half the population was Negro demonstrated that there could have been no lack of colored residents over 21 years of age. . . .

"There is no evidence on which even an inference can be based that any appreciable number of the otherwise qualified Negroes in the Parish were disqualified for selection because of bad character or criminal records . . . The testimony introduced by petitioner's own motion to quash create a strong prima facie showing that Negroes had been systematically excluded because of race from the grand jury and the venire from which it

was selected. Such an exclusion is a denial of equal protection of the laws contrary to the Federal Constitution—the supreme law of the land .... Principles which forbid discrimination in the selection of petit juries also cover the selection of grand juries. It is a right to which every colored man is entitled, that, in the selection of juries to pass upon his life, liberty, or property, there shall be no exclusion of his race, and no discrimination against them because of their color."

In Neal vs. Delaware, 103 U. S. 370, the Court sustained a motion to quash on the strength of an affidavit alone because (page 397):

"... the fact (so generally known that the court felt obliged to take judicial notice of it) that no colored citizen had ever been summoned as a juror in the courts of the State—although its colored population exceeded 20,000 in 1870 and in 1880 exceeded 26,000, in a total population of less than 150,000—presented a prima facie case of denial, by the officers charged with the selection of grand and petit jurors, of that equality of protection which has been secured by the constitution and laws of the United States. It was, we think, under all the circumstances, a violent presumption which the State court indulged, that such uniform exclusion of that race from juries, during a period of many years, was solely because in the judgment of its officers, fairly exercised, the black race in Delaware were utterly disqualified, by want of intelligence, experience, or moral integrity, to sit on juries. The action of those officers in the premises is to be deemed the act of the State, and the refusal of the State court to redress the wrong by them committed was a denial of a right secured to the prisoner by the Constitution and laws of the United States."

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In Norris vs. Alabama, 294 U. S. 587, in an opinion dealing with a motion to quash an indictment, it was said at page 593:

"The State Court rested its decision upon the ground that even if it were assumed that there was no name of a Negro on the Jury roll, it was not established that race or color caused the omission. The Court pointed out that the statute fixed a high standard of qualifications for jurors and that the Jury Commissioner was vested with a wide discretion. The Court adverted to the fact that more white citizens possessing age qualifications had been omitted from the Jury roll than the entire Negro population of the County, and regarded the testimony as being to the effect that the matter of race, color, politics, religion, or fraternal affiliations had not been discussed by the Commission and had not entered into their consideration and that no one had been excluded because of race or color . . . and the Commissioner testified that in the selections for the Jury roll, no one was automatically and systematically excluded on account of race or color; that he 'did not inquire as to color, that was not discussed.' "

At Page 594, the Court added:

"But in appraising the action of the Commissioners, the statements cannot be divorced from other testimony. As we have seen, there was testimony, not overborne or discredited, that there were in fact Negroes in the County qualified for jury service. That testimony was direct and specific. After eliminating those persons as to whom there was some evidence of lack of qualifications, a considerable number of those remained. The fact that the testimony as to these persons, fully identified, was not challenged by evidence

approximately direct, cannot be pushed aside. There is no ground for an assumption that the names of these Negroes were not on the preliminary list. The inference to be drawn from the testimony is that they were on that preliminary list, and were designated on that list as the names of Negroes, and that they were not placed on a Jury roll. There was thus presented a test of the practice of the Commissioners. Something more than mere general asseverations was required. Why were these names excluded from the jury? Was it because of the lack of statutory qualifications? Were the qualifications of Negroes actually and properly considered?"

"The testimony of the Commissioner leads to the conclusion that these or other Negroes were not excluded on account of age, or lack of esteem in the community for integrity and judgment, or because of disease or of any other qualification. The Commissioner's answer to specific inquiry upon this point was that Negroes were never discussed . . . We think that the evidence that for a generation or longer no Negro had been called for service on any jury in Jackson County, that there were Negroes qualified for jury service, that according to the practice of the jury commission their names would normally appear on the preliminary list of male citizens of the requisite age, but that no names of Negroes were placed on the jury roll, and the testimony with respect to the lack of appropriate causes of the disqualification of Negroes established the discrimination which the Constitution forbids. The motion to quash the indictment on that ground should have been granted."

Finally, the Supreme Court had to consider a motion to quash on an indictment and conviction for rape in the case of Smith vs. Texas, 311 U. S. 128.

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In that case the Negroes of the county comprised 20% of the population and 10% of the poll tax payers. A minimum of 3,000 to 6,000 measured up to qualifications for jury service. From 1931 to 1938, five of 384 grand jurors were Negroes. Total number summoned for grand jury service was 512, of whom 18 were Negroes. Of the 18 summoned, 13 appeared as the last names on a 16-man jury list, the first 12 of whom were selected.

As a result of this numbering, only 5 ever served, whereas 339 of the 494 white men summoned actually served. It also appeared that of the 32 grand juries empaneled, only 5 had Negro members, while 27 had none, and that of the 5, the same individual served three times, so that only three individual Negroes served at all. The tabulation of colored citizens serving on grand juries was as follows; 1931—1; 1932—2; 1933—1; 1934—1; 1935—none; 1936—1; 1937—none; 1938—none.

The Court, passing on these facts stated at page 130:

"It is part of the established tradition in the use of juries as instruments of public justice that the jury be a body truly representative of the community. For race discrimination to result in the exclusion from jury service of otherwise qualified groups not only violates our Constitution and the laws enacted thereunder (18 Stat. 336, 8 U. S. C., sec. 44), but is at war with our basic concepts of a democratic society and a representative government. We must consider this record in the light of these important principles. The fact that the written words of a states' laws hold out a promise that no such discrimination will be practiced is not enough. The 14th Amendment requires equal protection to all must be given—not merely promised . . . Chance and accident alone could hardly have brought about the

listing for grand jury service of so few Negroes from among the thousands shown by the undisputed evidence to possess the legal qualifications for jury service."

The Court stated that the denial by two jury commissioners, that they intentionally, arbitrarily or systematically discriminated against Negro jurors, was not sufficient.

"But even if their testimony were given the greatest possible effect, and their situation considered typical of that of the 94 commissioners who did not testify, we would still feel compelled to investigate the decision below. What the 14th. Amendment prohibits is racial discrimination in the selection of grand juries. Where jury commissioners limit those from whom grand juries are selected to their own personal acquaintance, discrimination can arise from commissioners who know no Negroes as well as from commissioners who know but eliminate them. *If there has been discrimination, whether accomplished ingenuously or* ingeniously, the conviction cannot stand" (Italics supplied).

What more appropriate comment could be made with respect to the five (5) cases at bar?

The Supreme Court of North Carolina, in its opinion in 227 N. C. 552, refers to the case of State vs. Walls, 211 N. C. 487, appeal dismissed, 302 U. S. 635, as being analogous to the cases at bar. It is respectfully submitted that an examination of the last cited case reveals no identity with the facts of the present cases at bar. In the Walls case, there was no positive evidence as to the exclusion of Negroes in the record, aside from proof that

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in the preparation of the jury lists there was the use of different colored inks for white and Negro citizens.

There is consequently in these five (5) cases no resemblance between the unchallenged proof of discrimination and exclusion by the Board of County Commissioners and the Superior Court of Forsyth County, and the failure to establish discrimination in the Walls case.

The five (5) cases at bar are not at all similar to, and may be distinguished from and in many respects differentiated from, the cases of Fay vs. New York and Bove vs. New York, 91 U. S. (L. Ed.) 1517, as follows:

First, in those cases the Negro or race question was not raised or brought in question, and therefore 18 Stat. 336 (1874) 18 U. S. C. Sec. 44, (enacted under the power granted Congress under the provisions of Sec. 5 of the 14th Amendment of the Federal Constitution) could not be availed of. In the case at bar petitioner is a Negro and the Negro or Race question is raised and brought in question and said Statute, 18 U. S. C. Sec. 44 is relied upon and set up.

Second, in those cases the alleged discrimination was not shown to exist for any considerable period of time past, while in the case at bar the discrimination is alleged and proven to have existed for a long period of time, namely, 10 years.

Third, in those cases the court said: "The defendants raise no question as to the constitutionality of the general statutes of New York which prescribe the qualifications, disqualifications and exemptions for ordinary jury service. Neither is any question raised as to the administration of these general statutes by which the population of New York County, numbering some 1,800,000 is sifted to produce a general jury panel of about 60,000 unless it be there is discrimination against wom-

en" (page 1521). In the case at bar the constitutionality of the General Statutes of North Carolina, with their qualifications, disqualifications and exemptions, as well as the administration of these General Statutes, is raised and set up.

The question of discrimination against white persons, which was presented in the petition for writs of certiorari, is not urged here.

On Dec. 8, 1947, in Patton vs. Mississippi, 92 U. S. (L. Ed.) 164, this Court once again had the solemn duty of declaring that State Statutes or administrative practices, which result in the arbitrary and systematic exclusion of Negroes from grand and petit juries, deny to Negro defendants in criminal cases the equal protection of the laws demanded by the 14th. Amendment. In reaching this conclusion, the Court cited "a long and unbroken line of our decisions" beginning with Strauder vs. West Virginia, 100 U. S. 303, decided 67 years ago.

Patton's Case then serves as a timely reminder by this Court that arbitrary and systematic exclusion from jury service because of race "not only violates our Constitution and the laws enacted under it, (Citing 18 Stat. at L. 336, 18 U. S. C. A. Sec. 44) but is at war with our basic concepts of a democratic society and a representative government." Smith vs. Texas, 311 U. S. 128, 130.

Nor can it make any difference, whether the petitioner, who seeks redress for the violation of these legal principles and their underlying political concepts, has been unfairly convicted of a misdemeanor or of a capital offense. The application of the legal principles is the same. For these exclusionary jury practices to be effectively extirpated, condemnation must reach those

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cases in which a man's liberty is the penalty as well as those where his life may be forfeited. It has indeed become timely to serve notice on State and Local officials that justice must be done in the small or lesser cases as well as in the larger or more serious ones. A person charged with a misdemeanor is as much entitled to the equal protection of the laws as the person who is charged with murder or rape. "Equal protection of the laws is something more than an abstract right. It is a command which the State must respect, the benefits of which *every person* may demand. Not the least merit of our constitutional system is, that its safeguards extend to *all*—the least deserving as well as the most virtuous". Italics supplied. Hill vs. Texas, 316 U. S. 400, 406.

In *Patton's Case,* the Court also had occasion to reiterate the well-established rule to the effect that;

"Whether there has been systematic racial discrimination by administrative officials in the selection of jurors is a question to be determined from the facts in each particular case." Patton vs. Mississippi, 92 U. S. (L. Ed.) 164, 165.

The rule is, as was fully stated in an earlier landmark, that "when a claim is properly asserted—as in this case—that a citizen, whose life is at stake, has been denied the equal protection of his country's laws on account of his race, it becomes our solemn duty to make independent inquiry and determination of the disputed facts—for equal protection to all is the basic principle upon which justice under law rests." Pierre vs. Louisiana, 306, U. S. 354, 358. If this were not the rule, "review by this Court would fail of its purpose in safeguarding constitutional rights." Norris vs. Alabama, 294 U. S. 587, 590.

Although the evidence in these five (5) cases at bar

is based in some particulars on approximations, the essential or main facts are not in dispute so that we are not asking the Court to pass on or to select from "disputed facts".

What does the proof show? It is double-barrelled. In the first place, the undisputed proof out of the mouths of appropriate County officials, (Witnesses, Virgil W. Joyce, and Walter A. Mickle) is that 7,000 Negroes were listed on the tax rolls or tax-lists of Forsyth County, and after making the maximum reduction of 30% for the several disqualifications, including lack of good moral character and sufficient intelligence, a total of 4,900 Negroes are left in Forsyth County who were eligible for jury service and whose names should have been placed in the regular County jury-list box to be drawn out, according to law, as conditions required. *But counsel for the State stipulated and agreed that a separate jury list marked "Colored" contained the names of only 255 Negroes for the biennial period,* 1945-1949, *or less than 6% of the total number of Negroes eligible.*

These facts, if there were nothing more, should be sufficient to show purposeful discrimination in jury service, based on race.

The evidence, taken in its most favorable light to the State, shows that the presence of a Negro on a petit jury or on a grand jury in Forsyth County is indeed a rare phenomenon. Witness, John D. Slawter, who has practiced law in the County at Winston-Salem for the past 31 years and who is one of the leading, active, attorneys there engaged in the criminal and civil practice in the Superior Court, testified (R. at p 22) that he thought there were more than 4 or 5 Colored persons who had served on the grand jury and the petit jury within the past 10 years but he was reluctant to state that there were as many as 10 Negroes.

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We concede, of course, that the burden of proving discrimination is on petitioners, Akins vs. Texas, 325 U. S. 398, but we think that the evidence in this record, just summarized, makes a very strong *prima facie* case, cf. Norris vs. Alabama, 294 U. S. 587, 594, and so strong that evidence on the other side has to be weighty indeed to overcome it.

But what does the evidence on the other side, come to? The fact is that no real effort was made by the State to try and overcome petitioner's evidence, and obviously so, because none could be had. The Sheriff, Ernie G. Shore, who is a County officer, and who has entire charge and control of summoning all prospective jurors in Forsyth County, testified that he had been sheriff of the County for the past 10 years and that (R. at page 16) "perhaps a dozen in all Colored persons have been summoned" during the past 10 years on both grand and petit juries.

We most respectfully submit that even on the State's evidence that petitioners have successfully carried the burden of proving racial exclusion and discrimination. With perhaps a dozen Negroes summoned within the past 10 years would make approximately one Negro, or a little over, a year. No mathematical calculations or gyrations can explain away the eventual qualification of only one Negro a year out of an original group of 4,900.

The infinitesimal number of Negroes who *served* on grand and petit juries in Forsyth County is further highlighted when the total number of persons serving is considered. As we have indicated by "Table" (Brief p 21) based on Wm. E. Church, Clerk's testimony) a fair estimate of the total number of persons who served during the 10 year period from 1936 to 1946, is 4,087, and if we assume that 12 Negroes actually served on the grand or petit jury during this 10 year period, this means that

one Negro only saw jury service each year as compared with 340 Whites each year who saw jury service. Now if we turn to the other "Table" (Brief p 16) based on Virgil W. Joyce, and Walter A. Mickle's testimony relative to taxpayer's lists) we find 4,900 Negroes were eligible for jury service as against 23,450 White, or a proportion of less than 1 to 5.

What is this but discrimination? And in the absence of explanatory evidence from the State, what is this but racial discrimination? The answer is peculiarly buttressed by the circumstance that the County maintained separate jury lists marked "Colored". If race cannot serve as a distinction for jury service, what purpose can be served by the maintenance of separate jury lists on the basis of race? The State has not supplied the answer.

We therefore most respectfully submit that the conclusion reached by the Supreme Court of North Carolina that racial discrimination has not been shown "is so lacking in support in the evidence that to give it effect would work that fundamental unfairness which is at war with due process", Lisenba vs. California, 314 U. S. 219, 238, or equal protection", Akins vs. Texas, 325 U. S. 398, 402.

The Court's speculation in *Smith's Case* (Smith vs. Texas, 311 U. S. 128, 131), that "Chance and accident alone could hardly have brought about the listing for grand jury service of so few Negroes from among the thousands shown by the undisputed evidence to possess the legal qualifications for jury service" is most pertinent to the five (5) cases at bar.

The case of Akins vs. Texas, 325 U. S. 398, was cited in Patton vs. Mississippi, 92 U. S. (L. Ed.) 164. In the Akins case the only alleged evidence of discrimination against Negroes consisted in willful limitation by the Grand Jury Commissioners of one Negro only on the grand jury panel of 16 men at the term of court at which

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the indictment against the petitioner was found, and in referring to this fact, in this case, at page 400 the Court said; " This is petitioner's only complaint as to racial discrimination. No other errors in the proceedings are pointed out". The Court therefore, in the Akins case, from the record evidence, was not convinced that there was deliberate and intention limitation of the number of Negroes on the grand jury list. But the evidence in the five (5) cases at bar is entirely different from and goes way beyond that in the Akins case.

II

The Supreme Court of North Carolina erred in not holding and decreeing, as alleged in the Motion to Quash, etc. (R. p 7) that the General Statutes of North Carolina, requiring as prerequisite qualifications for jury service that all persons shall be tax-listers and tax-payers, or freeholders, violate the Fourteenth Amendment of the Constitution of the United States and that the conviction of petitioners upon warrants tried by a petit jury in Forsyth County so made up, selected, and composed of tax-listers and tax-payers exclusively, is void, being in violation of the Fourteenth Amendment.

Despite the result reached by the Court in Fay vs. New York, and Bove vs. New York, 91 U. S. (L. Ed.) 1517, these cases are now authority for the proposition that State jury selection statutes or practices which discriminate against particular classes or groups in the community, are inconsistent with either the equal protection clause or the due process of law clause of the Fourteenth Amendment, or both.

It is the claim of petitioners that Chapter 9 of the General Statutes of North Carolina, when considered to-

gether with Chap. 105, Section 341 of the General Statutes of North Carolina, so limit the selection of grand and petit jurors and freeholders as to amount to a denial of equal protection and due process, and are therefore unconstitutional. Taxpayers include not only all property owners, but also, by virtue of Chap. 105, Section 341, all poll-tax payers. Since only male persons between the ages of 21 and 50 are required to pay poll taxes, all male persons over 50, who are propertyless, are completely excluded from jury service, by the terms of the Statute. Chap. 9, Sec. 1, restricts the jury list to tax payers, who are either property owners or poll tax payers. Chapter 9, Sec. 11, requires that talesmen be freeholders.

As a consequence, the payment of taxes and the ownership of property are made prerequisites for jury service, and an entire class of propertyless males, both white and Colored, over 21 years of age, are precluded from jury service. These disqualifications have no reasonable relationship to competency for jury service, but exclude a substantial economic segment of the community from involvement in the trial of causes that may well effect their status. Viewed from the aspect of the accused, defendants coming from the lowest economic levels of society, are confronted with juries that are unrepresentative of the class of persons from which they emerge.

The five (5) cases at bar represent a vivid example to illustrate how humble toilers may suffer prejudice when tried by jurors whose qualifications include the payment of taxes and the ownership of property. These lowly laundry workers were involved in a strike and labor dispute that can arouse the emotions of an entire community to a fever pitch and divide its sentiment along strictly economic lines. Can it be said that these peti-

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tioners could secure a fair trial from a jury that excluded the propertyless?

The Supreme Court of the United States reasoned along similar lines in the case of Thiel vs. Southern Pacific Co., 328 U. S. 217 (at p 223) as follows:

"Wage earners, including those who are paid by the day, constitute a very substantial portion of the community, a portion that cannot be intentionally and systematically excluded in whole or in part without doing violence to the democratic nature of the jury system. Were we to sanction an exclusion of this nature, we would encourage whatever desires those responsible for the selection of jury panels may have to discriminate against persons of low economic and social status. We could breathe life into any latent tendencies to establish the jury as the instrument of the economically and socially privileged. That we refuse to do."

See also Glasser vs. U. S., 315 U. S. 60, 85.

Chapter 9, General Statutes of North Carolina, Section 11, provides that to avoid a defect in the number of available petit jurors the Court may direct the sheriff tc summon from the community talesmen who must be freeholders, however; or the Court may have the names of such talesmen chosen from the regular jury box.

It is submitted that the statute is unconstitutional since it fixes as a prerequisite to eligibility for jury service as talesmen the ownership of real property. This is discriminatory against those who do not own real estate. The same arguments and reasons apply here as were made in connection with the statutes requiring payment of taxes as a precondition for jury service.

In the Thiel case (Thiel vs. Southern Pacific Co., supra) a passenger on a railroad sued in the Federal

Court for personal injuries suffered by him on a train. He moved to strike the jury panel on the ground that there was a deliberate and intentional exclusion from the jury list of persons who worked for a daily wage. Testimony was taken establishing such a practice, but the particular jury which heard the case did have at least 5 members of the laboring class on it. The high court reversed the District Court, which had denied the motion to strike the jury panel. The Court stated:

"It is likewise immaterial that the jury which actually decided the factual issue in the case was found to contain at least five members of the laboring class. The evil lies in the admitted wholesale exclusion of a large class of wage earners in disregard of the high standards of jury selection. To reassert those standards, to guard against the subtle undermining of the jury system, requires a new trial by a jury drawn from a panel properly and fairly chosen."

A jury must be fairly and impartially drawn from the community, without discrimination. The 14th Amendment operates as a prohibition against the policy or practice of excluding any particular group or class. A jury should be fairly and impartially made up out of the whole fabric of the community. (See Smith vs. State, 45 Tex. Cr. 405, 77 S. W. 453 (1903); 19 Boston Un. Law Rev., 413, 430). Quotas for particular races do not make properly constituted jury lists or panels; it is the bona fide absence of discrimination in drawing up these jury panels in the first instance which makes a fair and impartial jury.

It is submitted that the method of selecting the jury by systematically excluding propertyless persons from the box made the jury panel invalid.

In the Thiel vs. Southern Pacific Co., 328 U. S. 217, (at p. 225) the Court stated that "it becomes unnecessary to determine whether the petitioner was in any way prejudiced by the wrongful exclusion or whether he was one of the excluded class." It was sufficient, the court said, that "we cannot sanction the method by which the jury panel was formed in this case," (and cases there cited).

Likewise, in Glasser vs. U. S. 315 U. S. 60, the Supreme Court stated that had there been sufficient proof of deliberate selection of juries from a particular private organization of women, the panel would have been invalidated because of the exclusion of all women not members of the organization. This apparently would have been true because a fair and impartial jury would have been lacking, despite the fact that the accused was male.

In Ballard vs. U. S. 91 (L. Ed.) 195, the indictment was dismissed as to the male and female defendants because of the purposeful and systematic exclusion of women from the panel from which the grand jury was drawn.

The logical basis of these decisions is that the failure to draw a jury impartially and fairly from the community, without the exclusion of any group or class, is deemed prejudicial, irrespective of the particular status of the defendant.

While it is true that earlier decisions of this Court have apparently recognized State requirements of property ownership, tax payments, etc. as constitutional conditions precedent to jury service, yet it is submitted that present considerations call for re-examination of these disqualifying provisions.

Where grave economic conflicts arise in communities, the exclusion of the propertyless from jury service

can make a mockery of trial by jury for the humble worker enmeshed in the coils of the law. This is the spirit that animates the decision of this Court in Thiel vs. Southern Pacific Co., 328 U. S. 136.

No more pithy summary of petitioner's argument can be found than Mr. Justice Burton's statement in his dissent in Ballard vs. U. S. 91 U. S. (L. Ed.) 195, 205 that exclusion of an economic group from jury service detracts from "the representative character of the jury list, in a manner contrary to the tradition and purpose of the jury system."

Petitioners of course do not argue that they had the right to be tried by a jury composed only of persons drawn from the working class of which he or she is a member, but their complaint is that the jury selection Statutes discriminate to an obvious and considerable extent against the class of which he is a member.

In Fay vs. New York, 91 U. S. (L. Ed.) 1517, 1538, Mr. Justice Murphy said; "Under our Constitution the jury is not to be made the representative of the most intelligent, the most wealthy or the most successful, nor of the least intelligent, the least wealthy or the least successful. It is a democratic institution, representative of all qualified classes of people."

The "shoe on the other foot" argument used by Mr. Justice Douglas in Ballard vs. U. S. 91, U. S. (L. Ed.) 195, 198, in connection with the exclusion of women from juries, may be used here with even greater emphasis to bring out the grossness of the economic discrimination imposed by the North Carolina Jury selection Statutes. In these five (5) cases at bar petitioners, all of whom are poor workers, were tried for an offense growing out of a labor strike and labor dispute. Let us assume, how-

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ever, that it was the employer who was being tried and that the jury statutes restricted jury service to non-tax-paying wage earners only Who would then be so bold as to argue that the employer was being given a trial by a jury of his peers to which he is entitled by the Constitution? It is submitted that those who now argue that Thiel vs. Southern Pacific Co., 328 U. S. 217, should be restricted to proceedings in the Federal Courts because over such proceedings this Court "may exert a supervisory power with greater freedom to reflect our notions of good policy than we may constitutionally exert over proceedings in State Courts" and because "these expressions of policy are not necessarily embodied in the concept of the due process of law", Fay vs. New York, 91 U. S. (L. Ed. 1517, 1531-32, have overlooked the following language in the *Thiel Case;* 328 U. S. 217, 220, as follows:

> "The American tradition of trial by jury, considered in connection with either criminal or civil proceedings, necessarily contemplates an impartial jury drawn from a cross-section of the community. Smith v. Texas, 311 U. S. 128, 130, 85 L. Ed. 84, 86, 61, S. Ct. 164; Glasser v.United States, 315 U. S. 60, 85, 86 L. Ed. 680, 707, 62 S. Ct. 457. This does not mean, of course, that every jury must contain representatives of all the economic, social, religious, racial, political and geographical groups of the community; frequently such complete representation would be impossible. But it does mean that prospective jurors shall be selected by court officials without systematic and intentional exclusion of any of these groups. Recognition must be given to the fact that those eligible for jury service are to be found in every stratum of society. Jury competence is an individual rather than a group or class matter. That fact lies at the very heart of

the jury system. To disregard it is to open the door to class distinctions and discriminations which are abhorrent to democratic ideals of trial by jury." (At 220).

Does this language reflect merely this Court's "notions of good policy" or does it reflect this Court's conviction as to the meaning of the mandates of the Fourteenth Amendment? And would not this Court be prepared to apply that conviction to the case we have put? To try a person owning property by a jury from which property owners are systematically excluded, or to try a person not owning property by a jury from which the propertyless are systematically excluded,—either practice opens the door "to class distinctions and discriminations which are abhorrent to the democratic ideals of trial by jury."

We respectfully submit, therefore, that petitioners have been denied the equal protection of the laws because the North Carolina jury selection statutes favor property owners, and prejudice members of the working class, and that petitioners have been denied due process of law because they were tried by a jury from which members of their class were systematically excluded.

III

The Supreme Court of North Carolina erred in holding and decreeing that the petitioners, by filing their Motion to Quash prior to the swearing and impanelling of the jury to try the issues in the Superior Court of Forsyth County, did not invoke the proper procedure in challenging the validity and constitutionality of the practices used by the County and the State Courts in drawing up and selecting the petit juries.

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Petitioner's Motion to Quash properly presented a challenge to the *array*, raising the question of the invalidity and unconstitutionality of the *entire jury panel* because of discrimination and exclusionary practices and Statutory defects. Numerous cases coming to this court from common law jurisdictions have used the same procedure, Hill vs. Texas, 316 U. S. 400; Norris vs. Alabama, 294 U. S. 587; Neal vs. Delaware, 103 U. S. 370.

The State of North Carolina is a common law jurisdiction. (General Statutes of North Carolina, Chapter 4, Section I.).

Furthermore, in State vs. Kirksey, 227 N. C. 445, 447, the Supreme Court of North Carolina, said;

"If defendant had wished to take advantage of his objection to the petit jury and special venire, he should have done so by challenging the array, State vs. Douglas, 63 N. C. 500, and before entering upon the trial of the case".

Likewise, by implication the Supreme Court of North Carolina in the cases of State vs. Peoples, 131 N. C. 784, and State vs. Daniels, 134 N. C. 641, gave its approval to the use of the Motion to Quash in connection with petit juries as well as grand juries.

It is therefore most difficult for the petitioners to follow the reasoning of the Supreme Court of North Carolina in its opinion below where the Court apparently confused a challenge to the *array* with a challenge to the *polls*.

The reservations of the exceptions taken to the rulings on the Motion to Quash and to the Court's Findings

of Fact thereon, with respect to the regular panel, conclusively establishes that the petitioner's objections were taken and entered in a proper form and at the proper time.

The Supreme Court of North Carolina in its opinion in each of these five (5) cases at bar stated that the exceptions relied on in these five cases are the same as those presented in the case of State vs. Koritz, Etal, 227 N. C. 552, and that the exceptions in these five cases are controlled by the rulings in the Koritz case, there tieing all of these six cases up together. If it is intended by the Supreme Court of North Carolina thereby to hold that the petitioners in these five (5) cases were satisfied with or contented with the petit jury drawn from the County box in these five (5) cases, or that petitioner's rights were at any time waived, the same is most vigorously denied on the basis of the exceptions taken, as shown by the record in all of these five cases.

Again it should be noted that in the five (5) cases at bar there was no Order made in the Superior Court of Forsyth County ordering and directing that a special venire of 25 men be summoned by the sheriff and 10 of them, be Negroes, as was done in the Koritz case, (227 N. C. 552). So that, all references in the Koritz case by the Court, that appellant is first required, in challenging the jury poll under a special venire, to exhaust his peremptory challenges and then undertake thereafter to challenge another juror, before he can complain, is not relevant and can have no application to these five (5) cases, although it would seem that the contrary was intended by the court.

Nothing done or omitted to be done by the Petitioner in any way amounted to consent to the court's actions, or waiver or abandonment of petitioner's constitutional rights.

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It is significant that neither in the Koritz case, nor in the five (5) cases at bar, did the Superior Court of Forsyth County, or the State on appeal in the Supreme Court of North Carolina, made any reference whatever to any possible procedural deficiencies in presenting these questions.

The Petitioners are unable to comprehend the precise meaning of the Supreme Court of North Carolina in its discussion of the procedural question since the law of North Carolina was carefully followed in presenting the questions and exceptions were duly noted, and none of petitioner's rights were waived. Petitioner is at a loss to understand what more, if anything, could have been done by them to raise the questions presented to this court, and to preserve their rights in the premises.

In any event, Petitioners submit that considerations of insubstantive technical procedure should not preclude this Court from reviewing serious questions affecting basic and fundamental constitutional rights. Hormel vs. Helvering, 312 U. S. 552, 557, 558.

CONCLUSION

In the light of all of these flagrant discriminatory practices outlined in Petitioner's brief, and amply supported by the record evidence, it is most respectfully urged that no more deserving or appealing cause of violation of the 14th Amendment could be presented.

These poor, humble Negro workers, resting upon harsh and excessive punishments, are entitled, under the law, to have their rights and liberties passed upon by a jury constitutionally composed and devoid of discriminatory practices and imperfections. This they have not had. Deny them this right and the public officials of Forsyth County will be further encouraged to pursue and continue their practices of discrimination which make it

impossible for the poor and lowly of that County to secure a trial by jury which the ends of justice demand and require.

Superficial barriers of technical procedure or vocal denials of discrimination, no matter how cleverly and adroitly planned and carried out, should not by this Court be permitted to obscure a concealed deprivation of fundamental, constitutional rights. As stated by this Court in Smith vs. Texas, 311 U. S. 128, (at p. 132), "If there has been discrimination, whether accomplished ingenuously or ingeniously, the conviction cannot stand".

The injury done in petitioner's cases is not limited to petitioners only, important as that is, but affects seriously other interests as well, namely, (1) The Jury System in North Carolina, (2) the Law as an institution, (3) the Community at large, and (4) the Democratic Ideal of trial by jury.

Wherefore, it is most respectfully submitted that the judgments of the Supreme Court of North Carolina should be reversed.

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Attorneys for Petitioners.

APPENDIX

Jury Statutes of North Carolina

Chapter 9, General Statutes of North Carolina, (1943) provides the framework for the selection of jurors.

Section 1 states;

"The Board of County Commissioners for the several counties at their regular meetings on the first Monday in June, in the year 1905, and every two years thereafter, shall cause their clerks to lay before them the tax returns of the preceding year for their county, from which they shall proceed to select the names of all such persons as have paid all the taxes assessed against them for the preceding year and are of good moral character and of sufficient intelligence. A list of the names thus selected shall be made out by the Clerk of the Board of Commissioners and shall constitute the jury list, and shall be preserved as such."

Section 2 provides;

"The Commissioners at their regular meeting on the first Monday in July in the year 1905, and every two years thereafter, shall cause the names on their jury list to be copied on small scrolls of paper of equal size and put into a box procured for that purpose, which must have two divisions marked number one and number two, respectively, and two locks, the key of one to be kept by the sheriff of the county, the other by the chairman of the Board of Commissioners, and the box by the Clerk of the Board."

Section 3 states;

"At least 20 days before each regular or special term of the Superior Court, the Board of Commissioners of the County shall cause to be drawn from the jury box out of the partition marked No. 1, by a child not more than ten years of age, 36 scrolls except when the term of court is for the trial of civil cases exclusively, when they need not draw more than 24 scrolls. The persons whose names are inscribed on said scrolls shall serve as jurors at the term of the Superior Court to be held for the county ensuing such drawing, and for which they are drawn. The scrolls so drawn to make the jury shall be put into the partition marked No. 2. The said Commissioners shall at the same time and in the same manner draw the names of 18 persons who shall be summoned to appear and serve during the second week, and a like number for such succeeding week of the term of said court, unless the judge thereof shall sooner discharge all jurors from further service. The said Commissioners may, at the same time and in the same manner, draw the names of 18 other persons, who shall serve as petit jurors for the week for which they are drawn and summoned. The trial jury which has served during each week shall be discharged by the judge at the close of said week, unless the said jury shall be then actually engaged in the trial of a case, and then they shall not be discharged until the trial is determined."

Section 4, with respect to Forsyth County, provides:

" . . . . the Board of County Commissioners is authorized and empowered to draw as jurors from the box, as provided in the preceding section, an additional number of jurors to those now provided by law . . . . At all

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criminal terms, regular and special, for the first week 42 jurors shall be drawn in their stead."

Section 7 adds:

"If any of the persons drawn to serve as jurors are dead, removed out of the county, or otherwise disqualified to serve as jurors, the scrolls with the names of such persons must be destroyed, and in such cases other persons shall be drawn in their stead."

Section 11 deals with talesmen;

"That there may not be a defect of jurors, the sheriff shall by order of the court summon, from day to day, of the bystanders, others jurors, being freeholders, within the county where the court is held, or the judge may, in his discretion, at the beginning of the term direct the tales jurors to be drawn from jury box used in drawing the petit jury for the term, in the presence of the court; such tales jurors so drawn to be summoned by the sheriff and to serve on the petit jury, and on any day the court may discharge those who have served the preceding day. The judge may, upon his own motion, or upon the request of counsel for either plaintiff or defendant, instruct the sheriff to summons such jurors, outside of the courthouse. It is a disqualification and ground of challenge to any tales juror that such juror has acted in the same court as grand, petit or tales juror within two years next preceding such term of court."

Section 24 provides;

"The judges of the Superior Court, at the terms of their courts, except those terms which are for the trial of civil cases exclusively, and special terms for which no grand jury has been ordered, shall direct the names of

all persons returned as jurors to be written on scrolls of paper and put into a box or hat and drawn out by a child under ten years of age; whereof the first 18 drawn shall be a grand jury for the court; and the residue shall serve as petit jurors for the court."

These provisions constitute the method of jury selection relevant to a consideration of the record in this case.

It may be well to add at this point that the General Statutes of North Carolina (1943), Chapter 105.

Section 341 provides;

"There shall be levied by the Board of County Commissioners in each county a tax of $2.00 on each taxable poll or male person between the ages of 21 and 50 years. . . . ."

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1947

No. 292 JOHN HENRY BRUNSON, Petitioner,

v.

STATE OF NORTH CAROLINA, Respondent.

No. 293 ESSIE KING, Petitioner,

v.

STATE OF NORTH CAROLINA, Respondent.

No. 294 MARTHA JONES, Petitioner,

v.

STATE OF NORTH CAROLINA, Respondent.

No. 295 LOUISE JAMES (Alias MOORE), and EVELYN CHILDS, Petitioners,

v.

STATE OF NORTH CAROLINA, Respondent.

No. 296 LIDA MAE WATKINS, CELIA ANN PURCELL, JAMES EDWARD STURDIVANT, and LOUVENIA WALLACE, Petitioners,

v.

STATE OF NORTH CAROLINA, Respondent.

BRIEF OF THE STATE OF NORTH CAROLINA, RESPONDENT, OPPOSING PETITIONS FOR WRITS OF CERTIORARI

STATEMENT OF THE CASE

The petitioners, John Henry Brunson, Essie King, Martha Jones, Louise James (Alias Moore), Evelyn Childs, Lida Mae Watkins, Celia Ann Purcell, James Edward Sturdivant, and Louvenia Wallace, seek by writs of *certiorari* to have the United States Supreme Court to review the decisions of the Supreme Court of North Carolina affirming judgments imposing sentences upon the petitioners for convictions of various misdemeanors described in the facts below. The opinions of the Supreme Court of North Carolina, in these cases, were filed on June 5th, 1947. The opinions of the Supreme Court of North Carolina, in these cases, referred to and adopted the rulings in the case of STATE v. KORITZ, ET ALS, (227 N. C. 552), as decisive and controlling in these cases.

FACTS

All of the petitioners were convicted in the Municipal Court of the City of Winston-Salem of various misdemeanors growing out of a labor dispute. The petitioners all appealed to the Superior Court of Forsyth County, where they were again convicted; and upon their appeals to the Supreme Court of North Carolina, judgments of the Superior Court of Forsyth County were affirmed. Petitioner, Brunson, was convicted of assaulting, beating and wounding a woman, Christine Davis, the petitioner being a man over eighteen years of age.

Petitioner, Essie King, was convicted of disorderly conduct in that she engaged in fighting, cursing and disorderly conduct calculating to invoke a breach of the peace.

Petitioner, Martha Jones, was convicted on a charge of disorderly conduct in that she engaged in loud and boisterous cursing, using obscene language and engaging in

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other conduct calculating to invoke a breach of the peace.

Petitioner, Louise James (Alias Moore), was convicted on a charge of wanton and malicious injury to the property of Annie Blanton by throwing a rock through a window.

Petitioner, Lida Mae Watkins, was convicted on four charges:

(a) Assaulting, beating and wounding Ethel Crews with a deadly weapon, a stick.

(b) Assaulting, beating and wounding G. W. Lancaster with a deadly weapon, a stick.

(c) Hindering, delaying and resisting police officers in the discharge of their official duties.

(d) Assaulting, beating and wounding R. F. Holcomb with a deadly weapon, a stick.

Petitioner, Celia Ann Purcell, was convicted of assaulting, beating and wounding Estelle Britt with a deadly weapon, a stick.

Petitioner, James Edward Sturdivant, was convicted of assaulting, beating and wounding Estelle Britt, he being a man over eighteen years of age.

Petitioner, Louvenia Wallace, was convicted of assaulting, beating and wounding Estelle Britt.

The petitioners received various sentences as shown by the records. All of the petitioners filed motions to quash the warrants and discharge the trial jury and grand jury as shown in the records. These motions were based upon race discrimination in the drawing and selecting of the juries, the petitioners being colored people. The trial judge made findings of fact in each case to the effect that there had been no race discrimination in the drawing and selecting of the juries that convicted petitioners.

ARGUMENT

I

THE METHOD EMPLOYED BY THE COMMISSIONERS OF FORSYTH COUNTY IN THE SELECTION OF THE PETIT JURY IN THE PRESENT CASES PRESENTS NO SUBSTANTIAL FEDERAL QUESTION.

The Trial Court and the Supreme Court of North Carolina found that there was no arbitrary, intentional, or systematic discrimination against persons of the colored race in the selection of the trial jury in these cases. These findings are supported by the evidence in the records.

FAY v. NEW YORK, 91 L. ed. 1517, Decided June 23, 1947;

AKINS v. TEXAS, 325 U. S. 398; 89 L. ed. 1692;

THOMAS v. TEXAS, 212 U. S. 278; 53 L. ed. 512;

STATE v. WALLS, 211 N. C. 487; 191 S. E. 232, Appeal dismissed WALLS v. NORTH CAROLINA, 302 U. S. 635, 82 L. ed. 494.

In AKINS v. TEXAS, *supra*, Mr. Justice Reed said:

> "As will presently appear, the transcript of the evidence presents certain inconsistencies and conflicts of testimony in regard to limiting the number of Negroes on the grand jury. Therefore, the trier of fact who heard the witnesses in full and observed their demeanor on the stand has a better opportunity than a reviewing court to reach a correct conclusion as to the existence of that type of discrimination. While our duty, in reviewing a conviction upon a complaint that the procedure through which it was obtained violates due process and equal protection under the Fourteenth Amendment, calls for our examination of evidence to determine for ourselves whether a Federal constitu-

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tional right has been denied, expressly or in substance and effect, Norris v. Alabama, 294 U. S. 587, 589, 590, 79 L. ed. 1074, 1076, 1077, 55 S. Ct. 579; Smith v. Texas, 311 U. S. 123, 130, 85 L. ed. 84, 86, 61 S. Ct. 164, we accord in that examination great respect to the conclusions of the state judiciary, Pierre v. Louisiana, 306 U. S. 354, 358, 83 L. ed. 757, 760, 59 S. Ct. 536. That respect leads us to accept the conclusion of the trier on disputed issues 'unless it is so lacking in support in the evidence that to give it effect would work that fundamental unfairness which is at war with due process'."

In THOMAS v. TEXAS, *supra*, Mr. Chief Justice Fuller observed:

"As before remarked, whether such discrimination was practised in this case was a question of fact, and the determination of that question adversely to plaintiff in error by the trial court and by the court of criminal appeals was decisive, so far as this court is concerned, unless it could be held that these decisions constitute such abuse as amounted to an infraction of the Federal Constitution which cannot be presumed, and which there is no reason to hold on the record before us. On the contrary, the careful opinion of the court of criminal appeals, setting forth the evidence, justifies the conclusion of that court that the Negro race was not intentionally or otherwise discriminated against in the selection of the grand and petit jurors. Indeed, there was a Negro juror on the grand jury which indicted plaintiff in error, and there were Negroes on the venire from which the jury which tried the case was drawn, although it happened that none of them were drawn out of the jury box."

The facts in the case of STATE v. WALLS, *supra*, are identical with the facts in the instant case except for the difference in the mathematical ratios. Proportional representation is not required.

AKINS v. TEXAS, 325 U. S. 398; 89 L. ed. 1692;
THOMAS v. TEXAS, 212 U. S. 278; 53 L. ed. 512;
VIRGINIA v. RIVES, 100 U. S. 313; 25 L. ed. 667.

The Records in these cases show that the jury was drawn from the regular box by a child under ten years of age. (R. pp. 15, 32). The BRUNSON Record further shows (R. p. 36) that the name of one Negro juror was drawn out of the regular jury box, was summoned by the sheriff for service on the petit jury at the time these cases were tried and that he served. In the case of State v. WALLS, *supra*, the names of the white jurors were written in black ink; and those of the colored race were written in red ink. This method is used for convenience of officers who serve the jurors with process, since if they know the race of the juror, it is easier to locate the juror. Likewise, in the WALLS case, there were the names of 10,000 white persons in the jury box and 650 names of the colored race.

The appeal in the WALLS case was treated as a *certiorari* by this Court, and *certiorari* was denied. See WALLS v. STATE OF NORTH CAROLINA, 302 U. S. 635, 82 L. ed. 494.

II

THE NORTH CAROLINA STATUTES REGULATING THE SELECTION AND QUALIFICATION OF JURORS ARE CONSTITUTIONAL AND THE QUESTION OF THEIR VALIDITY DOES NOT PER SE PRESENT ANY SUBSTANTIAL FEDERAL QUESTION.

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The North Carolina Statutes relating to the selection and qualification of jurors make no mention of race as a qualification for jury service. Any person who meets the qualifications prescribed, regardless of race, is authorized to serve on a jury in North Carolina. Since the Statutes do not *per se* discriminate against any person because of race, any Federal question presented is not substantial because it has already been decided adversely to the contentions of the petitioners.

FAY v. NEW YORK, 91 L. ed. 1517, Decided June 23, 1947;

FRANKLIN v. SOUTH CAROLINA, 218 U. S. 162, 54 L. ed. 980;

BUSH v. KENTUCKY, 107 U. S. 110, 27 L. ed. 354;

NEAL v. DELAWARE, 103 U. S. 370, 26 L. ed. 567;

STRAUDER v. WEST VIRGINIA, 100 U. S. 303, 25 L. ed. 664.

III

WHETHER AN EXCEPTION OR ASSIGNMENT OF ERROR IS PROPERLY PRESENTED TO A STATE COURT PRESENTS NO SUBSTANTIAL FEDERAL QUESTION.

Whether or not a question is presented to a State court for decision should be determined by applying State laws and rules of court.

TARRANCE v. FLORIDA, 188 U. S. 519, 47 L. ed. 572.

Headnote number two of TARRANCE v. FLORIDA, *supra*, epitomizing the holding, reads as follows:

> "The settled rule of a state court that objections to the manner of selecting grand jurors on behalf of one who has been indicted by such jurors must be taken by

plea in abatement, and not by motion to quash the venire and panel, is binding on the Supreme Court of the United States on writ of error to the state court."

IV

THE PETITION FOR CERTIORARI PRESENTS NO FEDERAL QUESTION BECAUSE THE QUESTIONS ATTEMPTED TO BE RAISED BY THE PETITIONERS WERE NOT EXPRESSLY OR NECESSARILY DECIDED BY THE SUPREME COURT OF NORTH CAROLINA.

In the instant case the Supreme Court of North Carolina held only that the petitioners had not presented to it for decision any question of discrimination against members of the colored race in the selection of petit juries.

Since the highest court of the State did not expressly or necessarily decide any Federal question attempted to be presented by the petitioners, this court has no jurisdiction to review the decision of the North Carolina Supreme Court.

BROOKS v. MISSOURI, 124 U. S. 394;
WHITNEY v. CALIFORNIA, 274 U. S. 357;
LYNCH v. NEW YORK, 293 U. S. 52;
SOUTHWESTERN BELL TELEPHONE COMPANY v. OKLAHOMA, 303 U. S. 206.

In WHITNEY v. CALIFORNIA, 274 U. S. 357, 360, it is said:

> "It has long been settled that this court acquires no jurisdiction to review the judgment of a state court of last resort on a writ of error, unless it affirmatively appears on the face of the record that a Federal question constituting an appropriate ground for such review was presented in and expressly or necessarily decided by such state court."

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CONCLUSION

Even if some of the questions set out in the petitions are Federal ones, they are not substantial and have been resolved adversely to the contentions of the petitioners and are not of sufficient importance to warrant consideration by the United States Supreme Court. The writs should be denied since, under the rules and decisions of this Court, review on writs of *certiorari* is a matter not of right but of discretion.

UTLEY v. ST. PETERSBURG, 292 U. S. 106;
LEONARD v. VICKSBURG S. & P. R. CO., 198 U. S. 416.

Respectfully submitted,

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1947

No. 292 JOHN HENRY BRUNSON, Petitioner,

vs.

STATE OF NORTH CAROLINA, Respondent.

No. 293 ESSIE KING, Petitioner,

vs.

STATE OF NORTH CAROLINA, Respondent.

No. 294 MARTHA JONES, Petitioner,

vs.

STATE OF NORTH CAROLINA, Respondent.

No. 295 LOUISE JAMES (Alias MOORE), and EVELYN CHILDS, Petitioners,

vs.

STATE OF NORTH CAROLINA, Respondent.

No. 296 LIDA MAE WATKINS, CELIA ANN PURCELL, JAMES EDWARD STURDIVANT, and LOUVENIA WALLACE, Petitioners,

vs.

STATE OF NORTH CAROLINA, Respondent.

On Writs of Certiorari to the Supreme Court of the State of North Carolina.

BRIEF OF THE STATE OF NORTH CAROLINA, RESPONDENT.

STATEMENT OF THE CASE

The petitioners were convicted of various misdemeanors in the Municipal Court of the City of Winston-Salem in

Forsyth County, North Carolina. The petitioners appealed to the Superior Court of Forsyth County where they were again tried in October, 1946; and from convictions in this Court, the petitioners appealed to the Supreme Court of North Carolina. The opinions of the Supreme Court of North Carolina in these five cases are reported as follows: STATE v. JOHN HENRY BRUNSON, 227 N. C. 558, 43 S. E. (2d) 82; STATE v. ESSIE KING, 227 N. C. 559, 43 S. E. (2d) 82; STATE v. MARTHA JONES, 227 N. C. 561, 43 S. E. (2d) 82; STATE v. LOUISE JAMES (Alias Moore) and EVELYN CHILDS, 227 N. C. 558, 43 S. E. (2d) 83; STATE v. LIDA MAE WATKINS, CELIA ANN PURCELL, JAMES EDWARD STURDIVANT, and LOUVENIA WALLACE, 227 N. C. 560, 43 S. E. (2d) 83.

So far as the opinions of the Supreme Court of North Carolina in these five cases are concerned, they refer to the opinion of the Supreme Court of North Carolina in STATE v. KORITZ, ET AL, 227 N. C. 552, 43 S. E. (2d) 77; and it is stated that the KORITZ case, and rulings therein contained, shall be controlling and decisive of these cases. Petition for writ of *certiorari* in the KORITZ case (No. 234) was denied by this Court on October 13th, 1947. In these five cases (Nos. 292, 293, 294, 295, 296), the petitions for writs of *certiorari* from the United States Supreme Court to the Supreme Court of North Carolina were granted December 15th, 1947.

Aside from the fact that there are different petitioners, the Records in these cases are identical; and the parties have agreed that the Record in the BRUNSON case, No. 292, may be considered by the Court in hearing and deciding all five cases, and, likewise, the briefs filed in the BRUNSON case may be considered in behalf of all the cases.

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FACTS

All of the petitioners were convicted in the Municipal Court of the City of Winston-Salem of various misdemeanors growing out of a labor dispute. The petitioners all appealed to the Superior Court of Forsyth County, where they were again convicted; and upon their appeals to the Supreme Court of North Carolina, judgments of the Superior Court of Forsyth County were affirmed.

Petitioner, Brunson, was convicted of assaulting, beating and wounding a woman, Christine Davis, the petitioner being a man over eighteen years of age.

Petitioner, Essie King, was convicted of disorderly conduct in that she engaged in fighting, cursing and disorderly conduct calculating to invoke a breach of the peace.

Petitioner, Martha Jones, was convicted on a charge of disorderly conduct in that she engaged in loud and boisterous cursing, using obscene language and engaging in other conduct calculating to invoke a breach of the peace.

Petitioner, Louise James (Alias Moore), was convicted on a charge of wanton and malicious injury to the property of Annie Blanton by throwing a rock through a window.

Petitioner, Lida Mae Watkins, was convicted on four charges:

(a) Assaulting, beating and wounding Ethel Crews with a deadly weapon, a stick.

(b) Assaulting, beating and wounding G. W. Lancaster with a deadly weapon, a stick.

(c) Hindering, delaying and resisting police officers in the discharge of their official duties.

(d) Assaulting, beating and wounding R. F. Holcomb with a deadly weapon, a stick.

Petitioner, Celia Ann Purcell, was convicted of assault-

ing, beating and wounding Estelle Britt with a deadly weapon, a stick.

Petitioner, James Edward Sturdivant, was convicted of assaulting, beating and wounding Estelle Britt, he being a man over eighteen years of age.

Petitioner, Louvenia Wallace, was convicted of assaulting, beating and wounding Estelle Britt.

The petitioners received various sentences as shown on page 5 of their brief except it is stated that Lida Mae Watkins received a sentence of fifty-one months in the County Jail. A reference to Record No. 728, certified by the Supreme Court of North Carolina to this Court on petition for *certiorari*, will show, on pages 60 and 61, that this petitioner received a sentence of twelve months and that the Court ordered that all of the sentences in her other cases should run concurrently with the sentence of twelve months.

The petitioners filed motions to quash the warrants and discharge the trial jury and grand jury as shown on page 4 of the Record. The trial judge made findings of fact in each case to the effect that there was no discrimination in the selection of the jury in regard to color or religion and overruled petitioners' motion to quash. Upon the motion to quash, the petitioners and the State offered evidence as to the administrative method used in selecting the jury. The petitioners never, at any time, raised any question as to the sufficiency of the allegations in the warrants nor as to the sufficiency of the evidence to support the verdicts.

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ARRANGEMENT OF BRIEF

It is the contention of the respondent that the exceptions relied upon by the petitioners fall within two categories; and stated from the respondent's point of view, these cases will be discussed under the following headings:

I.

There was no intentional, arbitrary and systematic exclusion of eligible persons of petitioners' race from jury service by the Board of Commissioners of Forsyth County, North Carolina; and, therefore, there was no violation of the equal protection and due process clauses of the Fourteenth Amendment of the Constitution of the United States. The Supreme Court of North Carolina committed no error in affirming the action of the trial court in overruling petitioners' motion to quash the warrants and discharge the petit jury in these cases.

II.

The North Carolina statutes regulating the selection and qualification of jurors are constitutional and do not violate the Fourteenth Amendment of the Constitution of the United States. The conviction of petitioners by a petit jury made up and selected under these statutes is valid and is not in violation of the Fourteenth Amendment.

We do not discuss petitioners' subdivision III other than to here state that under our practice and the Constitution of North Carolina, it was proper to try the petitioners on the warrants issued in the Municipal Court of Winston-Salem. It was not necessary, therefore, for the Grand Jury to find indictments against the petitioners. Our Constitution, Article I, Section 12, provides: "No person shall be put to answer any criminal charge except as hereinafter

allowed, but by indictment, presentment, or impeachment." It is likewise provided in Article I, Section 13, that: "No person shall be convicted of any crime but by the unanimous verdict of a jury of good and lawful men in open court. The Legislature may, however, provide other means of trial for petty misdemeanors, with the right of appeal."

These provisions have been held by the Supreme Court of North Carolina to dispense with the necessity of finding a bill by the Grand Jury and have been declared to be valid and constitutional.

State v. Shine, 222 N. C. 237, 22 S.E. (2d) 447;
State v. Lytle, 138 N. C. 738, 51 S.E. 66.

The State has a right to devise its own criminal procedure, and the substitution of a warrant for an indictment found by the Grand Jury is constitutional under the Fourteenth Amendment. See HURTADO v. CALIFORNIA, 110 U. S. 516, 28 L. ed. 232. It is our contention, therefore, that so much of the motion to quash, as deals with the method of selecting the Grand Jury, is not at issue in this case.

Referring to the procedure used by the petitioners, motion to quash, to raise the constitutional questions presented in this case, respondent contends that the Supreme Court of North Carolina did not hold that the petitioners had failed to invoke the proper procedure to challenge the validity and constitutionality of the method used in selecting petit juries. The Supreme Court of North Carolina held that in order to present an exception on rulings to challenge to the polls, it was required to exhaust peremptory challenges and then attempt to challenge another juror. At any rate, irrespective of any possible difference between a motion to discharge the petit jury and a challenge to the array under our practice, it is admitted by the respondent

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that so far as this case is concerned, the petitioners have used the proper procedure to raise the constitutional questions here presented and that the Supreme Court of North Carolina did decided these constitutional questions adversely to the petitioners.

ARGUMENT

I.

THERE WAS NO INTENTIONAL, ARBITRARY AND SYSTEMATIC EXCLUSION OF ELIGIBLE PERSONS OF PETITIONERS' RACE FROM JURY SERVICE BY THE BOARD OF COMMISSIONERS OF FORSYTH COUNTY, NORTH CAROLINA; AND, THEREFORE, THERE WAS NO VIOLATION OF THE EQUAL PROTECTION AND DUE PROCESS CLAUSES OF THE FOURTEENTH AMENDMENT OF THE CONSTITUTION OF THE UNITED STATES. THE SUPREME COURT OF NORTH CAROLINA COMMITTED NO ERROR IN AFFIRMING THE ACTION OF THE TRIAL COURT IN OVERRULING PETITIONERS' MOTION TO QUASH THE WARRANTS AND DISCHARGE THE PETIT JURY IN THESE CASES.

There is no dispute about the law governing the constitution of juries in relation to the 14th Amendment. The intentional, arbitrary and systematic exclusion of colored persons from jury service on the trial panel because of race is a discrimination prohibited by the 14th Amendment.

Perhaps it can be stated that when a Negro defendant is deprived by design of the chance of having Negroes on the jury, then the Fourteenth Amendment to the United States Constitution may be invoked for his protection.

Strauder v. West Virginia, 100 U.S. 303, 25 L. ed. 664;
Norris v. Alabama, 294 U.S. 587, 79 L. ed. 1074;
Hollins v. Oklahoma, 295 U.S. 394, 79 L. ed. 1500;
Hale v. Kentucky, 303 U.S. 613, 82 L. ed. 1052;
Pierre v. Louisiana, 306 U.S. 354, 83 L. ed. 757;
Smith v. Texas, 311 U.S. 128, 85 L. ed. 84.

In AKINS v. TEXAS, 325 U. S. 398, 89 L. ed. 1692, the Court uses the words "purposeful discrimination." In NORRIS v. ALABAMA, supra, the Court uses the words "long-continued, unvarying, and wholesale exclusion of Negroes from jury service."

It is very generally held that the burden of proof is on the defendant or defendants to show an alleged discrimination in the selection of a grand or petit jury.

Akins v. Texas, 325 U.S. 398, 89 L. ed. 1692;
Murray v. Louisiana, 163 U.S. 101, 41 L. ed. 87.

There is a presumption that officers in charge of the selection and summoning of a jury or jury panel will be presumed to have performed their duty fairly and justly without discrimination against any race or class. In other words, discrimination in the selection of a jury will not be presumed.

Tarrance v. Florida, 188 U.S. 519, 47 L. ed. 572, 116 So. 470 (Fla.). (Certiorari denied in 278 U.S. 599, 73 L. ed. 525.)

Fairness in selection has never been held to require proportional representation of races upon a jury.

Akins v. Texas, 325 U.S. 398, 89 L. ed. 1692;
Virginia v. Rives, 100 U.S. 313, 25 L. ed. 667;
Thomas v. Texas, 212 U.S. 278, 53 L. ed. 512.

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A defendant has no constitutional right to be indicted or tried by any particular jury or by a jury composed in part of members of his race or class.

State v. Peoples, 131 N.C. 784, 42 S.E. 814;
State v. Sloan, 97 N.C. 499;
State v. Logan, 341 Mo. 1164, 111 S.W. (2d) 110; (1937);
Martin v. Texas, 200 U.S. 316, 50 L. ed. 494.

"It is unsafe, we think, to attach too much significance to abstract, mathematical ratios or to the so-called law of recurrences in determining whether there has been arbitrary discrimination in the selection of the juries."

Swain v. State, 215 Ind. 259, 18 N.E. (2d) 921,926.

The fact that in this case there were found separate lists with the word "colored" at the top of the page containing the list does not show discrimination.

State v. Walls, 211 N.C. 487, 191 S.E. 232 (1937); (distinguished by black ink and red ink);
State v. Middleton, 207 S.C. 478, 36 S.E. (2d) 742 (1946); (Negro juror distinguished by the letter "c").

The evidence in this Record shows that the Commissioners of Forsyth County did not put in the Jury Box all the names of eligible taxpayers of the white and colored races. It does not show any intentional, arbitrary, and systematic exclusion of colored persons from jury service, nor does it show purposeful discrimination. Respondent now desires to discuss some of the evidence since this Court reviews the facts in a case of this nature.

Margaret Bell: (R. p. 10) This witness works for the Winston-Salem Chamber of Commerce. Her evidence shows that according to the 1940 Census, Forsyth County had a population of 126,475 persons, of which approximately 45% were colored and 55% white. Her unofficial estimate for 1946 is 150,000 persons with 45% belonging to the colored race.

Virgil W. Joyce: (R. pp. 10, 11) This witness has been County Tax Supervisor since 1938. According to this witness, for the current year of 1946, there were 43,000 taxpayers; 32,500 are white and 4,000 colored; 2,500 firms, corporations and churches; 3,000 colored persons picked up from payrolls that pay poll taxes, and 1,000 white persons picked up for poll taxes.

Walter A. Mickle, County-City Tax Collector since July 1st, 1946, testified in part as follows:

> "Before I went in as Tax Collector, I was Deputy or Chief Deputy under Sheriff Shore from December, 1936, and as Chief Deputy it was part of my duties to handle the jury list and apportion the jurors to the various deputies and see that the jurors drawn were summoned.
>
> "I also assisted in the actual drawing of the jury and the preparation of the list until July 1946. I also assisted every odd two years in helping the Clerk of the Board of Commissioners in preparaing the jury scrolls that made up the jury list, by checking for dead, and people moved out of the county and other things. I would think that there are a proportionate amount of colored names in the box to the white, according to the tax scrolls of the County. I do not know of any colored man whose name has been drawn since the nine years I have been there, that was not summoned if he could be found. We have had quite a number in the last five years on the Grand Juries. I know of Artie

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Cash, Charlie Jeffries and a colored janitor at Frank Stith's and others. It is a fact that there are jurors, Negroes, on Petit Juries, both criminal and civil, that served. At the drawing of these juries, there has never been any juries drawn since I was connected with it, where there was not a child of less than 10 years of age there at the drawing of the jury lists. * * * *

" * * * * I have been present, representing the Sheriff's office, in the matter of drawing the jury by the Board of County Commissioners from December 1936, until June 1946. I did not take part in the deliberations of the Board of County Commissioners but was merely representing the Sheriff when he could not be there.

"I don't know the names of the five colored men that were summoned for service on the Grand Jury in the last five years but I remember that we had this year one colored man, Charlie Peebles, who I believe served the first six months of this year. During the past five years, beside Peebles, this Cash boy that the Solicitor mentioned and there are others whose names I don't recall right now.

"On the petit jury I don't recall anybody but I do know that Negroes have served but I don't recall their names. I don't know what names went into the jury box. I don't know the total number that went in there either. I had nothing to do with preparing the names that went into the jury box.

" * * * * I never heard any Commissioner discuss whether a man was black or white, that I remember, during the time I was in the office as Chief Deputy, at the drawing of the jury."

Ernie G. Shore, Sheriff of Forsyth County, testified in part as follows:

"I was present on a good many occasions when the jury lists were drawn by the Commissioners. On every

occasion that I was present, they had a child under 10 there to draw the list. The Board of Commissioners requested me to have a child there under 10 years old at each drawing. My Chief Deputy, Mr. Mickle, and I saw to that on each occasion. I never heard any statement made by any Commissioner, or inquiry made, as to whether a man drawn was white or black."

This witness thought there had only been twelve colored persons summoned since December 7, 1936 (R. p. 16). It should be noted, however, that his Chief Deputy, Walter Mickle, had the duty of seeing that jurors were summoned and apportioning the names among the various deputies for service. (R. p. 12). This witness testified that at the present Term of Court, no colored juror had been drawn or summoned (R. p. 16) whereas the Chairman of the Board of Commissioners testified on R. p. 30 that one colored juror, Jefferson H. Hairston, was drawn as a regular juror, was summoned and was serving on the Petit Jury. This witness did testify, on R. p. 23, that a Negro had been drawn for service at the next term of Court.

Gene Pratt, business agent for the Labor Union, testified:

"For 1941 there was produced by Mr. Lentz for our inspection and in our presence a separate list of jurors of the jury list which was marked 'colored' at the top. He stated that that was the state of the records of his office. For the year 1945 I examined the records produced there by Mr. Lentz and the jury list had a separate list marked 'colored.' I counted the total number of names on those typewritten sheets for white and colored for 1941. There was a total of 8,598 white names and 236 colored names, giving a grand total of 8,834 of both white and colored.

"I counted every name on the 1945 jury list of both white and colored and the total of those names for

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whites was 10,367 and the total for colored 255, making a grand total of 10,622 for both white and colored.

"I examined the typewritten pages of jury lists for each of the other years, namely, 1935, 1937, 1939 and 1943, and found that the total for each of these respective years would not vary more than 150 or 200 from the grand total of 10,622 for the year 1945.

"I have been in and out of the Forsyth County Superior Court about as much as the average person who did not have a case or was not an attorney and I have never yet seen a colored person sitting in the jury box. I do not know whether they were stood aside by lawyers or not. I do not know whether they were summoned here and begged to be excused or not for some good reason.

" • • • • On the jury lists that I saw in the Register of Deeds' office, I did see on that list 'colored' at the head of it. I am not certain whether the jury lists which I saw were the original lists or a copy thereof. There was nothing opposite each individual name on the jury list to show whether it was white or colored. The word 'colored' appeared only at the head of the paper.

"I do not say that the names on the other papers exclusive of those papers in the 1941 list marked 'colored' are not colored persons. There is nothing on any list at all except that list headed 'colored' persons that will designate a white man from a colored man."

The stipulation beginning on page 8 of the Record gives the details as to the jurors for various years as testified to by this witness.

James G. Haynes, Chairman of the Board of County Commissioners of Forsyth County, testified in part as follows: (R. pp. 26, 27)

"I am Chairman of the County Board of Commissioners of Forsyth County and have been since 1928.

In July of 1945, under the Statute, the Commissioners had the Clerk of the Board prepare and lay a scroll before them of the citizens and taxpayers of Forsyth County for the purpose of making up the jury list. To the best of our ability we checked the list and with the Clerk's help and the other people like Mr. Mickle and others, to find out who were dead and who had moved out of the county and who were people of good moral character.

"After preparing that scroll we had that placed in the box according to the law and before doing that I had the old names removed from the box. No questions were asked concerning whites and blacks. The lists were prepared and made up from the tax list record. That list was originally prepared from the actual tax cards in Mr. Vergil Joyce's office. They were turned over to Mr. Lentz and he was instructed to make the list from them. We have down here an IBM system where each taxpayer has a card and the original scroll that was turned over to Mr. Lentz was the running of every card that Mr. Joyce has in his office, and that was turned over. In the drawing of these lists, at no time did I or any other member of the Board ever discuss the qualifications of a juror as to whether he was white or colored. I do not know when I come to them whether they are white or colored unless I personally know the person. There is no red or black ink on any of them. They are all on black, I think.

"I do not have any independent knowledge as to the proportion of the white and colored in the box. All I know is that they are in there according to the proportion as they were on the tax list. We have a child under 10 who picks one out of the box and hands it to the Clerk. There is usually one of the Deputy Sheriffs or the Sheriff there, some man that he asks to act for him—who hands it to the first Commissioner. There are three of us at the table. After the first Commissioner inspects it he hands it to the second Commis-

sioner, and after the second Commissioner inspects it, he hands it to the third Commissioner, and after he inspects it he hands it to the stenographer, who writes the names.

"If any Commissioner knows that name is dead or has left the county or has been convicted of a felony, then I destroy that scroll. Otherwise the name goes on the list and every jury that I have ever attended was drawn in open session, the doors open, and people walk in and out constantly. There are a number of lawyers in town who have from time to time been present when we were drawing jurors. So if there had been any discussion as to who was to go in the box, as to the color, it would have been a matter of public record. There is usually, too, a newspaper reporter present when we are drawing it.

"As far as I know, Mr. Lentz has never reported to us any separate list for colored persons of 236 for 1941. They are all brought in and put in the box together. I have no information about a separate colored list of 255 names prepared in the biennial jury list of 1945. I have never asked Mr. Lentz to separate anything. I have turned them over to him with instructions to put them in the jury box. I would not know about two separate lists made up of white and colored. When they were brought in to us they were all in one basket, and we put all of them in the box. That is all I know. I didn't have anything to do with preparing the list.

" * * * There is one Negro juror, viz: Jefferson H. Hairston, whose name was drawn out of the regular county jury box and who was summoned by the Sheriff for service on the Petit Jury at this term and who is now serving."

It is submitted, therefore, that this evidence does not show purposeful and intentional discrimination as to the colored race. Accepting the petitioners' own figures, it

merely shows that eligible persons of both races were not put into the jury box, 13,083 white taxpayers and 4,645 colored taxpayers. If this is discrimination, then it is discrimination against both races. The petitioners strongly emphasize the percentage of white taxpayers not placed in the box as opposed to the larger percentage of colored taxpayers not placed in the box. On the other hand, those who have made the mathematical calculations tell us that if we accept the petitioners' tables as showing correctly the number of total taxpayers and the division into white and colored taxpayers and calculate mathematically a fixed ratio of colored to white that should appear on a venire of thirty men drawn for any term of Court, the percentage of colored representation would be 4.42. If we make the same calculation on a panel of twelve men and give the Negro race fixed representation on the panel according to their race as compared to the white race, there would be on each panel of twelve, 1.8 Negroes. If we make this same calculation on the basis of both white and colored, which petitioners say were actually in the jury box, then there would be on each panel of thirty jurors drawn for each week of Court 1.7032 Negroes, or roughly seven-tenths. The same calculation applied to each panel of twelve jurors would give .276, or roughly one-quarter of a colored man on a panel of twelve. The Clerk of the Superior Court testified that a panel of thirty jurors was drawn for each week of Court. (R. p. 20). This demonstrates the inconclusiveness of mathematical arguments on questions of discrimination, especially when we remember that the colored race, or for that matter no race, is entitled to fixed ratios of representation on a jury; but each race is entitled to its chance to be on the jury without discrimination. At this point, it should be recalled that the Chairman of the Board of County Com-

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missioners testified that at the term of Court in which these petitioners were being tried, there was a colored man serving on the Petit Jury although it does not appear that he was tendered as a juror on the particular trial panels that tried petitioners. Petitioners' own witness, Walter A. Mickle, who handled the jury list for several years and directed the various deputies to see that the jurors were summoned, testifies (R. p. 12) that all colored jurors whose names have been drawn have been summoned and that quite a number of colored people have served on grand juries in the last five years. He further states that Negroes have served on petit juries in both criminal and civil cases. We, therefore, do not have here the long-continued, unvarying and wholesale exclusion of Negroes from jury service presisting over many years which has been shown in nearly all of the cases cited by petitioners and upon which they rely.

In HILL v. TEXAS, 316 U. S. 400, 86 L. ed. 1559, a motion to quash the indictment was filed because of exclusion of Negroes from grand jury service. It appeared that there were many eligible Negro jurors but that no Negro had been on the grand jury list for sixteen years or more. The Assistant District Attorney for Dallas County testified that he never knew of a Negro being called to serve on a grand jury in the County. A colored witness, engaged in the insurance and bonding business and a resident of the County for fifty-four years, testified that he had never known of any colored man to be called as a grand juror. There were other witnesses to the same effect. This was held to make out a *prima facie* case of racial discrimination as to the service of Negroes on the grand jury.

In PIERRE v. LOUISIANA, 306 U. S. 354, 83 L. ed. 757, the petitioner filed a motion to quash the grand jury panel

and the petit jury panel because of race discrimination. The evidence showed that from 1896 until 1936, no Negro had served on the grand or petit juries in the Parish. The list for 1937 had only one Negro, and he was the only Negro who had ever been called for jury service in the memory of the Clerk. Approximately one-half of the population of this Parish was made up of Negroes, and it was shown that there were many Negroes eligible for jury service. This Court sustained the motion to quash, saying that this evidence created a strong *prima facie* showing of systematic exclusion because of race.

In NEAL v. DELAWARE, 103 U. S. 370, 26 L. ed. 567, a motion to quash on the grounds of race discrimination was sustained, it appearing that no colored citizens had ever been summoned as a juror in the Courts of the State although its colored population exceeded 20,000 in 1870 and in 1880 exceeded 26,000 in a total population of less than 150,000. This was held to raise a presumption of race exclusion.

In NORRIS v. ALABAMA, 294 U. S. 587, 79 L. ed. 1074, it was shown that there were Negroes qualified for jury service. It appeared that no Negro had served on any grand or petit jury within the memory of witnesses who had lived there all their lives. A member of the Commission which made up the jury roll for the grand jury, which found the indictment, testified that he had "never known of a single instance where any Negro sat on any grand or petit jury in the entire history of that county." Such testimony was held, by this Court, to make out a *prima facie* case of denial of the equal protection which the Constitution guarantees. There was also a question about the genuineness of the entries of the names of six Negroes on the jury rolls, the question being whether there were in fact any names of

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Negroes on the jury roll. On the question of the trial panel in Morgan County, the evidence was that in the memory of witnesses long resident in that County, no Negro had ever served on a jury in that County or had been called for such service. Some of these witnesses were over fifty years of age and had always lived in Morgan County.

In SMITH v. TEXAS, 311 N. C. 128, 85 L. ed. 84, the facts in regard to the jury service of colored jurors was as follows:

> "The court clerk, called as a state witness and testifying from court records covering the years 1931 through 1938, showed that only 5 of the 384 grand jurors who served during that period were Negroes; that of 512 persons summoned for grand jury duty, only 18 were Negroes; that of these 18, the names of 13 appeared as the last name on the 16 man jury list, the custom being to select the 12 man grand jury in the order that the names appeared on the list; that of the 5 Negroes summoned for grand jury service who were not given the number 16, 4 were given numbers between 13 and 16, and 1 was number 6; that the result of this numbering was that of the 18 Negroes summoned, only 5 ever served, whereas 379 of the 494 white men summoned actually served; that of 32 grand juries empanelled, only 5 had Negro members, while 27 had none; that of these five, the same individual served 3 times, so that only 3 individual Negroes served at all; that there had been no Negroes on any of the grand juries in 1938, the year petitioner was indicted; that there had been none on any of the grand juries in 1937; that the service of Negroes by years had been: 1931, 1; 1932, 2; 1933, 1; 1934, 1; 1935, none; 1936, 1; 1937, none; 1938, none."

While the facts show that some Negroes served on the grand jury, nevertheless, it appears that Negroes were as-

signed high numbers on the jury list; and the custom of selecting the grand jury in the order in which the names appeared on the list virtually excluded Negroes from service. This was undoubtedly one of the controlling factors in this decision, where it is stated in the opinion as follows:

> "Nor could chance and accident have been responsible for the combination of circumstances under which a Negro's name, when listed at all, almost invariably appeared as number 16, and under which number 16 was never called for service unless it proved impossible to obtain the required jurors from the first 15 names on the list."

In PATTON v. MISSISSIPPI, 92 L. ed. 164 (No. 4, Advance Opinions), there were Negroes qualified to serve as jurors in the county. The evidence showed, without contradiction, that no Negro had served on the grand or petit court juries for thirty years or more. During this period, one Negro had been summoned; but for some undisclosed reason, he had not served. It was held by this Court that the State had failed to meet the strong evidence of purposeful, racial discrimination.

The case of ROGERS v. ALABAMA, 192 U. S. 226, 48 L. ed. 417 was decided upon procedural questions; and the degree of exclusion of colored jurors does not appear in the case.

The case of MARTIN v. TEXAS, 200 U. S. 316, 50 L. ed. 497 discloses a situation where the defendent filed written motions but did not offer any evidence to support the motions, this Court holding that verified motions could not be used as evidence to establish the facts alleged in the motions.

While we do not question the legal principles set forth in the above cases, we have commented upon them for the

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purpose of showing that they were decided upon facts entirely different from the controlling facts in this case. Under the facts in this case, therefore, we do not think that any *prima facie* case or presumption of exclusion arises and that the petitioners have failed to meet the burden required of them. A mere showing that members of both races eligible for jury duty are not in the box and that the eligible number of colored taxpayers exceeds the eligible number of white taxpayers on a percentage basis does not show purposeful discrimination. There is no showing that a designation of race appears on the IBM cards delivered to the Commissioners for the purpose of preparing the jury list. The fact that for the years of 1941 and 1945 there were lists found with the designation "colored" at the top of the lists does not show discrimination. There is no evidence that there were not names of colored people on the other jury lists, or to state the proposition affirmatively, there is no evidence that all of the other jury lists were names of white jurors. This designation is resorted to many times so the officer summoning the juror will know approximately in what neighborhood to find him. In fact, if the jury officials wished to discriminate intentionally, the easiest way to have done it would have been to have made no designation at all.

Respondent contends, therefore, that the petitioners have not met the burden imposed upon them and as required by the principles stated in the case of FAY v. NEW YORK, 91 L. ed. 1517 (No. 17, Advance Opinions) where this Court said:

> "It is fundamental in questioning the composition of a jury that a mere showing that a class was not represented in a particular jury is not enough; there must be a clear showing that its absence was caused

by discrimination, and in nearly all cases it has been shown to have persisted over many years. Virginia v. Rives, 100 US 313, 322, 323, 25 L ed 667, 670, 671; Martin v. Texas, 200 US 316, 320, 321, 50 L ed 497, 498, 499, 26 S Ct 338; Thomas v. Texas, 212 US 278, 282, 53 L ed 512, 513, 29 S Ct 393; Smith v. Texas, 311 US 128, 85 L ed 84, 61 S Ct 164; Hill v. Texas, 316 US 400, 86 L ed 1559, 62 S Ct 1159; Akins v. Texas, 325 US 398, 89 L ed 1692, 65 S Ct 1276, supra. Also, when discrimination of an unconstitutional kind is alleged, the burden of proving it purposeful and intentional is on the defendant. Tarrance v. Florida, 188 US 519, 47 L ed 572, 23 S Ct 402; Martin v. Texas, 200 US 316, 50 L ed 497, 26 S Ct 338; Norris v. Alabama, 294 US 587, 79 L ed 1074, 55 S Ct 579; Snowden v. Hughes, 321 US 1, 8, 9, 88 L ed 497, 502, 503, 64 S Ct 397; Akins v. Texas, 325 US 398, 400, 89 L ed 1692, 1694, 65 S Ct 1276."

Under the North Carolina practice, the questions raised by the petitioners' motion to quash are in the first instance heard and decided by the trial Court. The trial Court makes findings of fact; and in the absence of an abuse of discretion or in the absence of lack of evidence to support findings, such decision of the trial Court is ordinarily binding upon the Supreme Court. This practice is illustrated by the following cases:

State v. Henderson, 216 N.C. 99, 3 S.E. (2d) 357;
State v. Bell, 212 N.C. 20, 192 S.E. 852;
State v. Walls, 211 N.C. 487, 191 S.E. 232;
State v. Cooper, 205 N.C. 657, 172 S.E. 199;
State v. Lord, 225 N.C. 354, 34 S.E. (2d) 205.

While it is recognized by respondent that on a question of this kind, this Court will examine the facts and evidence to see if fundamental constitutional rights have been denied, nevertheless, great weight is accorded to the de-

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cisions of state courts who make the initial decisions and have a better opportunity to investigate the facts.

Thomas v. Texas, 212 U.S. 278, 53 L. ed. 512;
Akins v. Texas, 325 U.S. 398, 89 L. ed. 1692.

In THOMAS v. TEXAS, *supra*, this Court said:

> "As before remarked, whether such discrimination was practised in this case was a question of fact, and the determination of that question adversely to plaintiff in error by the trial court and by the court of criminal appeals was decisive, so far as this court is concerned, unless it could be held that these decisions constitute such abuse as amounted to an infraction of the Federal Constitution, which cannot be presumed, and which there is no reason to hold on the record before us. On the contrary, the careful opinion of the court of criminal appeals, setting forth the evidence, justifies the conclusion of that court that the Negro race was not intentionally or otherwise discriminated against in the selection of the grand and petit jurors. Indeed, there was a Negro juror on the grand jury which indicted plaintiff in error, and there were Negroes on the venire from which the jury which tried the case was drawn, although it happened that none of them were drawn out of the jury box."

In AKINS v. TEXAS, *supra*, this Court said:

> "As will presently appear, the transcript of the evidence presents certain inconsistencies and conflicts of testimony in regard to limiting the number of Negroes on the grand jury. Therefore, the trier of fact who heard the witness in full and observed their demeanor on the stand has a better opportunity than a reviewing court to reach a correct conclusion as to the existence of that type of discrimination. While our duty, in reviewing a conviction upon a complaint that the procedure through which it was obtained violates due

process and equal protection under the Fourteenth Amendment, calls for our examination of evidence to determine for ourselves whether a Federal constitutional right has been denied, expressly or in substance and effect, Norris v. Alabama, 294 U. S. 587, 589, 590, 79 L. ed. 1074, 1076, 1077, 55 S. Ct. 579; Smith v. Texas, 311 U. S. 123, 130, 85 L. ed. 84, 86, 61 S. Ct. 164, we accord in that examination great respect to the conclusion of the state judiciary, Pierre v. Louisiana, 306 U. S. 354, 358, 83 L. ed. 757, 760, 59 S. Ct. 536. That respect leads us to accept the conclusion of the trier on disputed issues 'unless it is so lacking in support in the evidence that to give it effect would work that fundamental unfairness which is at war with due process'."

In the case of STATE v. WALLS, 211 N. C. 487, 191 S.E. 232, the following are the facts with reference to alleged discrimination as taken from the opinion of the Court:

"The court below found: 'Motion to quash the bill of indictment is denied and the court finds as a fact there are approximately 10,000 names of the white race in the jury box and something over 600 names of the colored race in the jury box, and at this term of court there is one colored man on the grand jury that returned a true bill in this case, and that there has been no discrimination against the defendant.'

"The clerk of the board of county commissioners testified: 'The scrolls containing the colored race, approximately 650 in number, are still in red ink and the scrolls containing the names of the white race are in black ink. That condition existed at the time it was done in red and black ink so as to distinguish them, so they would know whether to look for a white man or a colored man. There is no discrimination in the selection of names; when a child draws a name out we put the name on the jury list, have a colored man on the grand jury now. There is no discrimination in the

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selection of the grand jury or petit jury. When the names are called out I put them on the list to give the sheriff to be summoned for jury service. We have been using a four-year-old child and if the name comes out red or black it is put on the list. The purpose in two different colors of ink is to see who to look for. It makes it easier to look for them. . . . There are about 650 names of the colored race and approximately 10,000 whites. There is one colored man on the grand jury now who found this bill. Q. In drawing the jurors at former terms was a colored man on the petit jury? Ans: Yes, sir, ever since last year we have had colored men drawn and on the civil jury frequently. I do not know how many. Q. Regardless of how many were drawn there was not but one colored man drawn this last time? Ans.: Yes, there were two. That is all that came out of the box; it should average about two out of thirty if the average is kept up'."

In the disparity between the number of white and colored jurors; the designation of colored jurors by red ink; the fact that one colored juror served on the Grand Jury, and the finding made by the trial judge, this case (WALLS) and the case now before the Court are analogous. The experience of the county in the service of colored jurors is not given. This Court dismissed the appeal, treated the appeal as a petition for a writ of *certiorari* and denied *certiorari*. See WALLS v. NORTH CAROLINA, 302 U. S. 635, 82 L. ed. 494.

The North Carolina statutes dealing with selecting the jury and revising the jury lists have been interpreted by the Supreme Court of North Carolina to be directory only and are not mandatory.

State v. Daniels, 134 N.C. 641, 46 S.E. 743;
State v. Banner, 149 N.C. 519, 63 S.E. 84;
State v. Dixon, 131 N.C. 808, 42 S.E. 944.

The case of STATE v. DANIELS, *supra*, has many features similar to this case. In the DANIELS case, the prisoner was indicted for murder and filed a motion to quash upon the grounds of race discrimination. The total population of Jones County at that time was 8,239, of which 4,479 were whites and 3,760 were colored. The jury commissioners failed to put into the jury box 528 eligible colored male citizens, and they likewise failed to put into the jury box the names of about the same number of eligible white citizens. The motion to quash was overruled; and upon appeal to the Supreme Court of North Carolina, it was held that the jury statutes were directory and that the jurors had been selected from an eligible list without discrimination.

We conclude this portion of the argument, therefore, by saying that other than the failure to live up to the directory regulations prescribed by the jury statutes, there has been no discrimination shown on the facts in this case.

II.

THE NORTH CAROLINA STATUTES REGULATING THE SELECTION AND QUALIFICATION OF JURORS ARE CONSTITUTIONAL AND DO NOT VIOLATE THE FOURTEENTH AMENDMENT OF THE CONSTITUTION OF THE UNITED STATES. THE CONVICTION OF PETITIONERS BY A PETIT JURY MADE UP AND SELECTED UNDER THESE STATUTES IS VALID AND IS NOT IN VIOLATION OF THE FOURTEENTH AMENDMENT.

In this portion of the argument, the petitioners make two points: that the North Carolina jury statutes establishing the methods of preparing jury lists and setting forth the

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qualifications of jurors are unconstitutional as being a violation of the Fourteenth Amendment; and, second, it is contended that the principles established by this Court as being applicable to the selection and constitution of juries in the Federal Courts should be applied to the State Courts.

The petitioners particularly assail Sections 9-1, 9-2 and 9-3, and likewise Section 9-11 of the General Statutes. It is said that these statutes are discriminatory because poll tax payers include only males between the ages of twenty-one and fifty, because the payment of taxes and the possession of property are made prerequisites for jury service and because talesmen are required to be freeholders. It will be noted that there is nothing in any of these statutes that discriminates against the colored race. There is no mention of race in any of these statutes; and any juror who can meet the qualifications, regardless of race, can serve in the courts of this State. It is tnot unusual for states to require that prospective jurors shall be freeholders, electors, householders, or be of a certain age, have a certain standard of intelligence, moral character, etc. In fact, at common law jurors had to be freeholders. See 31 Am. Jur. (JURY), Sec. 126. Statutes prescribing qualifications for jurors generally and particularly with reference to the qualifications above listed do not infringe against the Fourteenth Amendment. The only thing the statute cannot do is to confine the selection of jurors to a particular race and thus exclude other races or groups. The decisions of the Supreme Court of the United States, dealing with the laws of a particular state as to its jury qualifications, have only nullified those laws or clauses of constitutions which confine jury service to the white race.

Strauder v. West Virginia, 100 U.S. 303, 25 L. ed. 664;
Neal v. Delaware, 103 U.S. 370, 26 L. ed. 567;
Bush v. Kentucky, 107 U.S. 110, 27 L. ed. 354.

The respondent contends, therefore, that if a state statute does not specifically discriminate against colored people, the state has a right to fix qualifications for jurors; and this is not voided by the Fourteenth Amendment.

Franklin v. South Carolina, 218 U.S. 162, 54 L. ed. 980;
Strauder v. West Virginia, 100 U.S. 303, 25 L. ed. 664;
Commonwealth v. Johnson, 78 Ky. 509;
Wood v. Brush, 140 U.S. 278, 35 L. ed. 505;
Bush v. Kentucky, 107 U.S. 110, 27 L. ed. 354;
Gibson v. Mississippi, 162 U.S. 565, 40 L. ed. 1075;
31 Am. Jur. (Jury), Sections 53; 126;
Miller v. Commonwealth, 105 S.W. 899 (Ky.).

One quotation from STRAUDER v. WEST VIRGINIA, *supra*, we think will be sufficient on this question:

> "We do not say that, within the limits from which it is not excluded by the Amendment, a state may not prescribe the qualifications of its jurors, and in so doing make discriminations. It may confine the selection to males, to freeholders, to citizens, to persons within certain ages, or to persons having educational qualifications. We do not believe the 14th Amendment was ever intended to prohibit this. Looking at its history, it is clear it had no such purpose. Its aim was against discrimination because of race or color. As we have said more than once, its design was to protect an emancipated race, and to strike down all possible legal discriminations against those who belong to it."

The petitioners admit that the principles established by this Court in the above cited cases do permit state require-

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ments of property ownership and tax payments and other eligibility conditions for jury service. On page 39 of petitioners' brief, it is said:

> "While it is true that earlier decisions of this Court have apparently recognized State requirements of property ownership, tax payments, etc. as constitutional conditions precedent to jury service, yet it is submitted that present considerations call for re-examination of these disqualifying provisions."

The petitioners, however, in a rather indirect fashion, ask this Court to overrule their former decisions on this subject; and after discussing cases cited which deal with Federal juries, they ask this Court certain questions on page 42 of their brief which, in essence, are a polite challenge to this Court to establish the same uniform rule in all the states which will conform with the Federal rule.

The petitioners particularly rely upon the cases of THIEL v. SOUTHERN PACIFIC CO., 228 U.S. 217, 90 L. ed. 1181; GLASSER v. UNITED STATES, 315 U.S. 60, 86 L. ed. 680 and BALLARD v. UNITED STATES, 91 L. ed, 195 (No. 3, Advance Opinions) and contend that the North Carolina statutes are unconstitutional because they are not in conformity with the principles decided in these cases.

The THIEL case dealt with the systematic exclusion of daily wage earners from a jury list. The case came to this Court on *certiorari* to review a judgment of the Circuit Court of Appeals for the Ninth Circuit, affirming a judgment of the District Court of the United States for the Northern District of California. The 14th Amendment was not involved in the case. This Court ordered the jury panels stricken out in the exercise of its power of supervision over the administration fojustice in the Federal Courts. This Court specifically said:

> "It follows that we cannot sanction the method by which the jury panel was formed in this case. The trial court should have granted petitioner's motion to strike the panel. That conclusion requires us to reverse the judgment below in the exercise of our power of supervision over the administration of justice in the Federal courts. See McNABB v. UNITED STATES, 318 U.S. 332, 340, 87 L. ed. 819, 823, 63 S. Ct. 608."

That no constitutional issue was at stake is specifically set forth in the dissenting opinion of Mr. Justice Frankfurter, who specifically stated: "No constitutional issue is at stake. The problem is one of judicial administration." We submit, therefore, that this case is no authority at all on the question of the constitution of state juries under the Fourteenth Amendment.

The case of GLASSER v. UNITED STATES, 315 U.S. 60, 86 L. ed. 680, which is again a case which came up from a Federal District Court and deals with the constitution of juries in the Federal Court and not the constitution of juries in a state wherein the Fourteenth Amendment is invoked. The improper constitution of the trial jury was not controverted by any affidavits or form of denial. There was, therefore, no constitutional question involved. All of the rules about a "cross-section of the community" were laid down for the guidance of the Federal Courts and officials in selecting jurors.

That there were no constitutional questions under the Fourteenth Amendment involved in these cases is plainly shown in the BALLARD case, *supra*, where this Court said:

> "Put the matter another way, Congress has referred to state law to determine who is qualified to act as a juror. Whether the method of selecting a jury in the Federal Courts from those qualified is or is not proper is a question of Federal law."

The reason given for setting aside the decision of the lower Federal Court in the BALLARD case is as follows:

> "We conclude that the purposeful and systematic exclusion of women from the panel in this case was a departure from the scheme of jury selection which Congress adopted and that, as in the THIEL case, we should exercise our power of supervision over the administration of justice in the Federal Courts, McNABB v. U. S. (U.S.), *supra*, to correct an error which permeated this proceeding."

It will be noted that all of these cases cited by the petitioners depend upon the authority of McNABB v. U. S., 318 U.S. 332, 87 L. ed. 819. In the McNABB case, this Court was careful to point out the distinction between reviewing convictions in state courts in the light of the Fourteenth Amendment and convictions in the Federal Courts wherein judicial supervision can be exercised aside from the Fourteenth Amendment. To make this distinction clear, this Court said, in the McNABB case:

> "In the view we take of the case, however, it becomes unnecessary to reach the constitutional issue pressed upon us. For, while the power of this Court to undo convictions in state courts is limited to the enforcement of those 'fundamental principles of liberty and justice,' HEBERT v. LOUISIANA, 272 U. S. 312, 316, 71 L. ed. 270, 272, 47 S. Ct. 103, 48 ALR 1102, which are secured by the Fourteenth Amendment, the scope of our reviewing power over convictions brought here from the Federal courts is not confined to ascertainment of constitutional validity. Judicial supervision of the administration of criminal justice in the Federal courts implies the duty of establishing and maintaining civilized standards of procedure and evidence. Such standards are not satisfied merely by observance of those minimal historic safeguards for

securing trial by reason which are summarized as 'due process of law' and below which we reach what is really trial by force. Moreover, review by this Court of state action expressing its notion of what will best further its own security in the administration of criminal justice demands appropriate respect for the deliberative judgment of a state in so basic an exercise of its jurisdiction. Considerations of large policy in making the necessary accommodations in our Federal system are wholly irrelevant to the formulation and application of proper standards for the enforcement of the Federal criminal law in the Federal courts."

The freedom of the various states, within reasonable limits, to establish their own methods and procedures in establishing jury lists and in the selection of the jury is again affirmed in FAY v. NEW YORK, 91 L. ed. 1517, 1531, where this Court said:

"These defendants rely heavily on arguments drawn from our decisions in Glasser v. United States, 315 US 60, 86 L ed 680, 62 S Ct 457; Thiel v. Southern P. Co., 328 US 217, 90 L ed 1181, 66 S Ct 984, 166 ALR 1412, and Ballard v. United States, 329 US 187, ante, 195, 67 S Ct 261. The facts in the present case are distinguishable in vital and obvious particulars from those in any of these cases. But those decisions were not constrained by any duty of deference to the authority of the State over local administration of justice. They delt only with juries in federal courts. Over federal proceedings we may exert a supervisory power with greater freedom to reflect our notions of good policy than we may constitutionally exert over proceedings in state courts, and these expressions of policy are not necessarily embodied in the concept of due process. * * * *

"The function of this federal Court under the Fourteenth Amendment in reference to state juries is not to prescribe procedures but is essentially to protect

the integrity of the trial process by whatever method the state sees fit to employ. No device, whether conventional or newly devised, can be set up by which the judicial process is reduced to a sham and courts are organized to convict. They must be organized to hear, try and determine on the evidence and the law. But beyond requiring conformity to standards of fundamental fairness that have won legal recognition, this Court always has been careful not so to interpret this amendment as to impose uniform procedures upon the several states whose legal systems stem from diverse sources of law and reflect different historical influences.

"We adhere to this policy of self-restraint and will not use this great centralizing Amendment to standardize administration of justice and stagnate local variations in practice."

Respondent, the State of North Carolina, contends, therefore, that the petitioners have not been denied any of their constitutional rights as guaranteed by the Fourteenth Amendment of the United States Constitution in the administration of the jury system in Forsyth County, where petitioners were tried; that the jury statutes of North Carolina are constitutional and valid and that the opinion of the Supreme Court of North Carolina should be affirmed.

Respectfully submitted,

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APPENDIX

Chapter 9, General Statutes of North Carolina — Jury

SEC. 9-1. *Jury list from taxpayers of good character.*—The board of county commissioners for the several counties at their regular meeting on the first Monday in June, in the year nineteen hundred and five, and every two years thereafter, shall cause their clerks to lay before them the tax returns of the preceding year for their county, from which they shall proceed to select the names of all such persons as have paid all the taxes assessed against them for the preceding year and are of good moral character and of sufficient intelligence. A list of the names thus selected shall be made out by the clerk of the board of commissioners and shall constitute the jury list, and shall be preserved as such.

SEC. 9-2. *Names on list put in box.*—The commissioners at their regular meeting on the first Monday in July in the year nineteen hundred and five, and every two years thereafter, shall cause the names on their jury list to be copied on small scrolls of paper of equal size and put into a box procured for that purpose, which must have two divisions marked No. 1 and No. 2, respectively, and two locks, the key of one to be kept by the sheriff of the county, the other by the chairman of the board of commissioners, and the box by the clerk of the board.

SEC. 9-3. *Manner of drawing panel for term from box.*—At least twenty days before each regular or special term of the superior court, the board of commissioners of the county shall cause to be drawn from the jury box out of the partition marked No. 1, by a child not more than ten years of age, thirty-six scrolls except when the term of court is

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for the trial of civil cases exclusively, when they need not draw more than twenty-four scrolls. The persons whose names are inscribed on said scrolls shall serve as jurors at the term of the superior court to be held for the county ensuing such drawing, and for which they are drawn. The scrolls so drawn to make the jury shall be put into the partition marked No. 2. The said commissioners shall at the same time and in the same manner draw the names of eighteen persons who shall be summoned to appear and serve during the second week, and a like number for each succeeding week of the term of said court, unless the judge thereof shall sooner discharge all jurors from further service. The said commissioners may, at the same time and in the same manner, draw the names of eighteen other persons, who shall serve as petit jurors for the week for which they are drawn and summoned. The trial jury which has served during each week shall be discharged by the judge at the close of said week, unless the said jury shall be then actually engaged in the trial of a case, and then they shall not be discharged until the trial is determined.

SEC. 9-4. *Local modifications as to drawing panel.*— * * * * In Forsyth county the board of county commissioners is authorized and empowered to draw as jurors from the box, as provided in the preceding section, an additional number of jurors to those now provided by law. At all civil terms, regular and special, for the first week, thirty jurors shall be drawn and summoned, and likewise for the second week. At all criminal terms, regular and special, for the first week forty-two jurors shall be drawn and summoned.

For the second week thirty jurors shall be drawn and summoned.

SEC. 9-6. *Jurors having suits pending.*—If any of the jurors drawn have a suit pending and at issue in the superior court, the scrolls with their names must be returned into partition No. 1 of the jury box.

SEC. 9-7. *Disqualified persons drawn.*—If any of the persons drawn to serve as jurors are dead, removed out of the county, or otherwise disqualified to serve as jurors, the scrolls with the names of such persons must be destroyed, and in such cases other persons shall be drawn in their stead.

SEC. 9-8. *How drawing to continue.*—The drawing out of partition marked No. 1 and putting the scrolls drawn into partition No. 2 shall continue until all the scrolls in partition No. 1 are drawn out, when all the scrolls shall be returned into partition No. 1 and drawn out again as herein directed.

SEC. 9-9. *Drawing when commissioners fail to draw.*—If the commissioners for any cause fail to draw a jury for any term of the superior court, regular or special, the sheriff of the county and the clerk of the commissioners, in the presence of and assisted by two justices of the peace of the county, shall draw such jury in the manner above prescribed; and if a special term continues for more than two weeks, then for the weeks exceeding two a jury or juries may be drawn as in this section provided.

SEC. 9-10. *Summons to jurors drawn; to attend until discharged.*—The clerk of the board of county commissioners shall, within five days from the drawing, deliver the list of jurors drawn for the superior court to the sheriff of the county, who shall summon the persons therein named to attend as jurors at such court. The summons shall be served, personally, or by leaving a copy thereof

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at the house of the juror, at least five days before the sitting of the court to which he may be summoned. Jurors shall appear and give their attendance until duly discharged.

SEC. 9-11. *Summons to talesmen; their disqualifications.*—That there may not be a defect of jurors, the sheriff shall by order of the court summon, from day to day, of the bystanders, other jurors, being freeholders, within the county where the court is held, or the judge may, in his discretion, at the beginning of the term direct the tales jurors to be drawn from the jury box used in drawing the petit jury for the term in the presence of the court; such tales jurors so drawn to be summoned by the sheriff and to serve on the petit jury, and on any day the court may discharge those who have served the preceding day. The judge may, upon his own motion, or upon the request of counsel for either plaintiff or defendant, instruct the sheriff to summon such jurors outside of the courthouse. It is a disqualification and ground of challenge to any tales juror that such juror has acted in the same court as grand, petit or tales juror within two years next preceding such term of court.

SEC. 9-12. *How talesmen summoned when sheriff interested.*—When, in the trial of any action before a jury, the sheriff of the county in which the case is to be tried is a party to or has any interest in the action, or when the presiding judge finds upon investigation that the sheriff of the county is not a suitable person, on account of indirect interest in or relative to the cause of action, to be entrusted with the summoning of the tales jurors in any particular case pending, such judge shall appoint some suitable person to summon the jurors in place of the sheriff.

SEC. 9-13. *Penalty for disobeying summons.* — Every

person on the original venire summoned to appear as a juror who fails to give his attendance until duly discharged shall forfeit and pay for the use of the county the sum of twenty dollars, to be imposed by the court; but each delinquent juryman shall have until the next succeeding term to make his excuse for his nonattendance, and, if he renders an excuse deemed sufficient by the court, he shall be discharged without costs. Every person summoned of the bystanders who shall not appear and serve during the day as a juror shall be fined in the sum of two dollars, unless he can show sufficient cause to the court; and the clerk shall forthwith issue an execution against the estate of the delinquent tales juror for such amercement and costs.

SEC. 9-14. *Jury sworn; judge decides competency.*—The clerk shall, at the beginning of the court, swear such of the petit jury as are of the original panel, to try all civil cases; and if there should not be enough of the original panel the talesmen shall be sworn. The petit jurors of the original panel, as well as talesmen, shall be sworn as prescribed in the chapter entitled Oaths. Nothing herein shall be construed to disallow the usual challenges in law to the whole jury so sworn or to any of them; and if by reason of such challenge, any juror is withdrawn, his place on the jury shall be supplied by any of the original venire, or from the bystanders qualified to serve as jurors. The judge or other presiding officer of the court shall decide all questions as to the competency of jurors in both civil and criminal actions.

SEC. 9-15. *Questioning jurors without challenge.*—The court, or any party to an action, civil or criminal, shall be allowed, in selecting the jury to make inquiry as to the fitness and competency of any person to serve as a juror,

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without having such inquiry treated as a challenge of such person, and it shall not be considered by the court that any person is challenged as a juror until the party shall formally state that such person is so challenged.

SEC. 9-16. *Causes of challenge to juror drawn from box.*—It shall not be a valid cause of challenge that a juror called from those whose names are drawn from the box is not a freeholder or has served upon the jury within two years prior to the court at which the case is tried or has not paid the taxes assessed against him during the preceding two years. In other respects the cause of challenge shall be the same as now provided by law, and nothing herein shall modify any law authorizing jurors to be summoned from counties other than the county of trial.

SEC. 9-17. *Jurors impaneled to try case furnished with accommodations.*—When a jury, impaneled to try any cause, is put in charge of an officer of the court, the said officer shall furnish said jury with such accommodation as the court may order, and the same shall be paid for by the party cast or by the county, under the order and in the discretion of the judge of the court.

SEC. 9-18. *Exemption from civil arrest.*—No sheriff or other officer shall arrest under civil process any juror during his attendance on or going to and returning from any court of record. All such service shall be void, and the defendant on motion shall be discharged.

SEC. 9-24. *How grand jury drawn.*—The judges of the superior court, at the terms of their courts, except those terms which are for the trial of civil cases exclusively, and special terms for which no grand jury has been ordered, shall direct the names of all persons returned as jurors to be written on scrolls of paper and put into a box or hat and

drawn out by a child under ten years of age; whereof the first eighteen drawn shall be a grand jury for the court; and the residue shall serve as petit jurors for the court.

SEC. 9-26. *Exceptions for disqualifications.* — All exceptions to grand jurors for and on account of their disqualifications shall be taken before the jury is sworn and impaneled to try the issue, by motion to quash the indictment, and if not so taken, the same shall be deemed to be waived. But no indictment shall be quashed, nor shall judgment thereon be arrested, by reason of the fact that any member of the grand jury finding such bills of indictment had not paid his taxes for the preceding year, or was a party to any suit pending and at issue.

SEC. 105-341. *Levy of poll tax.*—(1) There shall be levied by the board of county commissioners in each county a tax of two dollars ($2.00) on each taxable poll or male person between the ages of twenty-one and fifty years, and the taxes levied and collected under this section shall be for the benefit of the public school fund and the poor of the county. * * * * *

SUPREME COURT OF THE UNITED STATES

Nos. 292–296.—October Term, 1947.

John Henry Brunson, Petitioner,
292 v.
State of North Carolina, Respondent.

Essie King, Petitioner,
293 v.
State of North Carolina, Respondent.

Martha Jones, Petitioner,
294 v.
State of North Carolina, Respondent.

Louise James (Alias Moore), and Evelyn Childs, Petitioners,
295 v.
State of North Carolina, Respondent.

Lida Mae Watkins, Celia Ann Purcell, James Edward Sturdivant, and Louvenia Wallace, Petitioners,
296 v.
State of North Carolina, Respondent.

On Writs of Certiorari to the Supreme Court of the State of North Carolina.

[March 15, 1948.]

Per Curiam.

Reversed. *Strauder* v. *West Virginia*, 100 U. S. 303; *Ex parte Virginia*, 100 U. S. 339; *Neal* v. *Delaware*, 103 U. S. 370; *Carter* v. *Texas*, 177 U. S. 442; *Rogers* v. *Alabama*, 192 U. S. 226; *Norris* v. *Alabama*, 294 U. S. 587; *Hollins* v. *Oklahoma*, 295 U. S. 394; *Hale* v. *Kentucky*, 303 U. S. 613; *Pierre* v. *Louisiana*, 306 U. S. 354; *Smith* v. *Texas*, 311 U. S. 128; *Hill* v. *Texas*, 316 U. S. 400; *Patton* v. *Mississippi*, 332 U. S. 463.

MARCH 15, 1948.

Per Curiam Decisions.

No. 292. BRUNSON *v.* NORTH CAROLINA;

No. 293. KING *v.* NORTH CAROLINA;

No. 294. JONES *v.* NORTH CAROLINA;

No. 295. JAMES ET AL. *v.* NORTH CAROLINA; and

No. 296. WATKINS ET AL. *v.* NORTH CAROLINA. Certiorari, 332 U. S. 841, to the Supreme Court of North Carolina. Argued February 3, 1948. Decided March 15, 1948. *Per Curiam:* Reversed. *Strauder* v. *West Virginia*, 100 U. S. 303; *Ex parte Virginia*, 100 U. S. 339; *Neal* v. *Delaware*, 103 U. S. 370; *Carter* v. *Texas*, 177 U. S. 442; *Rogers* v. *Alabama*, 192 U. S. 226; *Norris* v. *Alabama*, 294 U. S. 587; *Hollins* v. *Oklahoma*, 295 U. S. 394; *Hale* v. *Kentucky*, 303 U. S. 613; *Pierre* v. *Louisiana*, 306 U. S. 354; *Smith* v. *Texas*, 311 U. S. 128; *Hill* v. *Texas*, 316 U. S. 400; *Patton* v. *Mississippi*, 332 U. S. 463. *William Reid Dalton* argued the cause for petitioners. With him on the brief was *Nathan Witt*. *Ralph Moody*, Assistant Attorney General of North Carolina, argued the cause for respondent. With him on the brief were *Harry McMullan*, Attorney General, and *James E. Tucker*, Assistant Attorney General. Reported below: 227 N. C. 558, 559, 560, 561, 43 S. E. 2d 82, 83.